Supreme Court, U.S.
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In The
Supreme Court of the United States

Marc Sanford, in his official capacity as Governor of the State of South Carolina, Jean Hoefer Toal, in her official capacity as Chief Justice of South Carolina, the South Carolina Department of Social Services, the State of South Carolina, the State of South Carolina on behalf of the people of South Carolina, Jane and John Doe and those similarly situated,.....Petitioners,

v.

Tommy G. Thompson, in his official capacity as the Secretary of the United States Department of Health and Human Services, Wade F. Horn, Ph.D., in his official capacity as Assistant Secretary of the United States Department of Health and Human Services for Children and Families, and the United States Department of Health and Human Services,.....Respondents.

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

At what point does permissible congressional inducement under the Spending Clause become unconstitutional congressional coercion in violation of both the Spending Clause and the Tenth Amendment? More specifically:

1. Did the Court of Appeals err in affirming summary judgment where the record demonstrated that Congress violated the Tenth Amendment by coercing a state to change the allocation of power between its branches of government, by obscuring the responsibility of state officials for actions Congress mandated, and by changing fundamental principles of family law through appropriations under the Spending Clause?

2. Did the Court of Appeals err in affirming summary judgment where the evidence shows that Congress used its spending power to coerce a state into making changes in its fundamental structure of government in the area of family law by tying new requirements not only to new federal appropriations, but also to funding under pre-existing programs which form a significant part of the states' welfare budgets and which for decades have been provided by the federal government?

3. Did the Court of Appeals err in affirming summary judgment where the record shows that Congress used the Spending Clause to dictate State family law policy when (a) the spending program is unrelated to any federal interest, (b) the spending program penalizes effective child support collection programs, and (c) the statutes at issue do not put the State on notice of the consequences of accepting federal funds for new programs because the consequences for older programs are not clearly

defined, the conditions are ambiguous, and no notice is provided that actions outside the State's control could result in termination?

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OPINIONS AND ORDERS BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit in *Hodges v. Thompson*, 311 F.3d 316 (4th Cir. 2002), affirming the District Court's grant of Summary Judgment to all defendants as to all claims was issued on November 15, 2002, and is set out in the Appendix at A-1.

The order of the Court of Appeals denying the Petition for Rehearing and for Rehearing *en banc* was filed on January 13, 2003, and is set out in the Appendix at A-8.

The order of the United States District Court, District of South Carolina, in *Hodges v. Shalala*, 121 F. Supp.2d 854 (D.S.C. 2000) was issued on October 24, 2000, and is set out in the Appendix at A-10.

STATEMENT OF JURISDICTION

Petitioners invoke the jurisdiction of this Court pursuant to 28 U.S.C. §1254(1). The order of the United States Court of Appeals for the Fourth Circuit affirming the District Court's grant of summary judgment for all defendants as to all claims was entered on November 15, 2002. Petitioners filed a Petition for Rehearing and for Rehearing *en banc* on December 30, 2002, which the Court of Appeals denied on January 13, 2003. This Petition is timely pursuant to Sup. Ct. R. 13.3.

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STATEMENT OF THE CASE

This case presents a federal question regarding the constitutionality and proper interpretation of Part IV-D of the Social Security Act, particularly 42 U.S.C. §§ 654, 654a, 654b, 655 and 666 (West 2000), and regulations promulgated thereunder. A declaratory judgment seeking a determination that a federal statute violates a prohibition of the Constitution creates subject matter jurisdiction in the United States District Court under the federal question statute. 28 U.S.C. § 1331(a); 28 U.S.C. §§ 2201-2202; *Duke Power Co. v. Carolina Environmental Study Group, Inc.*, 438 U.S. 59, 68-72 (1978).

This case arises out of the inability of the State of South Carolina to comply with certain conditions imposed by Part IV-A and Part IV-D of the Social Security Act, specifically, the requirement for an automated child support data processing system ("automated system") and the requirement for a statewide child support disbursement/collection unit ("SDU"). The State's inability to comply with those conditions was the result of the defaults of a private contractor hired by the State to develop the automated system.

Faced with a notice that the United States Department of Health and Human Services ("USHHS") planned to impose potentially catastrophic penalties without any opportunity for South Carolina to present evidence, the State, through its governor, Jim Hodges, and other state officials (hereinafter "Petitioners"), filed an action seeking a declaratory judgment that (1) USHHS Administration for Children and Families ("ACF") misinterpreted these statutes; (2) ACF failed to follow its own procedures; (3) ACF acted arbitrarily and irrationally in attempting to penalize South Carolina; and (4) the retroactive and ambiguous changes in plan requirements breached the state/federal funding "contract." Petitioners also alleged that the relevant statutes

and regulations on their face and as applied by ACF violated the Spending Clause and the Tenth Amendment. The Amended Complaint alleged a claim under the Fifth Amendment that the imposition of penalties denying benefits to individuals without a hearing violated due process.

Part IV-A of the Social Security Act, dealing with Temporary Assistance to Needy Families ("TANF"), is the successor to the Aid to Families with Dependent Children ("AFDC") program which began as part of the federal/state effort to combat the Great Depression. TANF funds go to the poorest families to assist with purchasing basic necessities. Part IV-D to the Social Security Act, 42 U.S.C. §§ 651-669, the Child Support Enforcement Act, was enacted in 1975 and created a federally mandated, but state operated, child support enforcement program. This program required participation by federal welfare recipients but also permitted voluntary participation by citizens not receiving welfare. 42 U.S.C. §§ 654(4)(a), 657. Congress provided funding for two-thirds of the IV-D program but also provided that, if a state rejected the program, not only would it lose the new grant of child support enforcement money but it would also lose the AFDC money which the states had been receiving for decades for the purpose of providing living essentials to the state's most impoverished citizens.

South Carolina created a uniform Family Court system in 1976. The Constitution and statutory law of South Carolina assigned to the Family Court the responsibility for establishing paternity, determining the amount of child support, and enforcing child support. The state legislation standardized procedures for child support determination and enforcement statewide. It also required administration of ongoing enforcement orders in each county by the clerks of court, who are elected constitutional officers, under the supervision of the judicial branch. Each county computerized its child support information in the early 1980s, and the State applied for and received federal funding

in the late 1980s to help it design a central paternity and child support data processing system for use by the Department of Social Services ("DSS"), the state executive agency responsible for coordinating child support enforcement. With federal approval, DSS designed and implemented a statewide system that manually received and communicated data to and from the clerks of court systems. South Carolina implemented this computer system in 1990.

Today, a highly efficient system utilizing the clerks disburses child support payments to recipients on an average of within one business day of receipt. Each clerk acts as the local agent for the collection and disbursement of child support payments ordered by the Family Court. Because the clerks have intimate knowledge of local conditions, unallocated payments remain low. The clerks of court, as repositories of local knowledge, create this efficiency. The mandate of the automated system and SDU will replace the local clerk with an automated 800 number, thereby supplanting the benefits provided by the clerk's local knowledge. OCSE-AT-97-13. South Carolina received federal incentive awards for its child support performance in three of five areas in the Federal FY 2001 grant award. South Carolina missed incentives in the fifth area by two points. The automated system and SDU mandates require South Carolina to change its highly effective system of child support enforcement or, if it does not, place at risk the bulk of funding for its child support and aid to children in poverty programs.

In the present case, two requirements added to Part IV-D in 1988 and 1996 are at issue--the mandate for a federally designed single statewide automated data processing system for child support ("automated system") (42 U.S.C. § 654a), and a central statewide collection and disbursement unit for child supports payments ("SDU") (42 U.S.C. § 654b). When Congress added the automated system mandate in 1988, it again offered funds to the states,

but with a proviso that, if a state refused the funds to develop an automated system of the specified type, the state would lose all other child support enforcement funding, and the AFDC/TANF funds providing economic support for needy citizens would be cut off as well. 42 U.S.C. §§ 602(a)(2), 655(a). The requirements for the new automated system varied from those of the voluntary program South Carolina had implemented. South Carolina's system is fully automated and consists of a statewide DSS system linked to the 46 county clerk of court systems that collectively provide all the functionality required in the single statewide system. Although South Carolina specifically asked USHHS to provide a waiver for a linked system that exchanged information, USHHS refused to act on the waiver, even though Congress later specifically authorized linked systems.

In 1996, Congress passed further amendments to Part IV-D requiring the SDU. 42 U.S.C. § 654b. The SDU must operate through the single statewide automated system; thus, compliance with the SDU is impossible without compliance with the automated system requirement. 42 U.S.C. §§ 602(a)(2), 655(a). A state refusing to implement the SDU would lose, not only the new funds appropriated for this purpose, but also all funds for the automated system, all child support funds, and the entire TANF block grant. 42 U.S.C. §§ 602(a)(2), 655(a).

The appropriations for the tools mandated by Congress in its effort to micro-manage the states' child support enforcement systems — the automated system and the SDU — constitute but a tiny fraction of the full appropriation for matching funds for child support enforcement and TANF. For example, South Carolina received $1,785,814 in federal matching funds for the automated system/SDU projects in 1999. In that same year, South Carolina received $99,967,824 for TANF funding, and federal matching funds for the child support program totaled $23,680,000. Through the mechanism of funding penalties,

Congress tied these relatively minor appropriations for the automated system and SDU to the much larger and only tangentially related appropriations for child support administration and TANF. 42 U.S.C. §§ 655(a)(1), 602, 603; 45 C.F.R. §§ 301.13, .14, .15 (full penalty); 42 U.S.C. §§ 655(a)(4)(A)(i), (a)(5)(A)(i) (alternative penalties). Congress dictated state policy and day-to-day governmental administration without a real choice for the states when it tied the automated system and SDU funds back to the full child support program and TANF.

Both the requirement for an automated system and for the SDU came after the creation of an appropriation for a joint state/federal child support enforcement program to aid in removing families from welfare. 42 U.S.C. §§ 654a, 654b. The automated system mandate applies to all cases and the SDU mandate applies to all cases, involving wage withholding, not just to families receiving federal aid. Of the cases serviced by the South Carolina Department of Social Services (DSS), the agency responsible for the joint state/federal child support program in South Carolina, only 14% involve welfare recipients. Nationwide, only a fraction of the cases, about 28%, involve interstate payments. H.R. Rep. No. 104-651 at 1405 (1996), reprinted at 1996 U.S.C.C.A.N. 2183, 2464.

Congress began the AFDC/TANF program in the 1930s. In 1974-75, Congress added Part IV-D to the Social Security Act, providing partial federal funding for state operated child support programs which helped recover AFDC/TANF funds. In 1984, Congress offered funds to assist the states in automating paternity/child support data and functions, but it did not tie such funds to child support program matching funds or AFDC. If a state voluntarily accepted such funds, then it had to comply with applicable federal guidelines.

Congress departed from this long established model in 1988 by requiring the automated system as a prerequisite to child support program and TANF matching funds. The Office of Child Support Enforcement (OCSE) of the United States Department of Health and Human Services, Administration for Children and Families (ACF)[1] announced that the new automated system requirements would differ from the 1984 voluntary program, but ACF did not finalize regulations spelling out the new requirements until June 1993.

By accepting conditional funding after Congress provided for the requirement but before ACF defined it, the states could not know the conditions imposed. If a state refused funding for the automated system, however, it would also lose funding for the child support program and for TANF.

Congress added SDU as part of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) amendments in 1994. As with the automated system, if a State refused funds for SDU, it then lost funds for the automated system, federal matching funds for the child support program, and the federal share of TANF.

USHHS imposed penalties on South Carolina without holding an evidentiary hearing. USHHS regulations and the statute provide no procedure for an appeal from a letter of intent to disapprove. However, the statute envisions some appeal. To fill this procedural void, ACF issued an Action Transmittal on April 28, 1997, establishing notice and rules for a hearing. On its own web site, ACF posted that South Carolina would receive a hearing.

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[1] The United States agencies and officers involved will often be referred to as ACF for convenience.

USHHS approves IV-D plans so long as an automated system is "conditionally certified." No statute or regulation provides for or defines "conditional certification." USHHS admits that, at the time it rejected South Carolina's plan, it had no printed or definitive guidelines for conditional certification, nor did it have formal process or time limits for following up to determine if a State has corrected the deficiencies. States are conditionally certified with major sections of the requirements missing.

Congress specifically granted USHHS the ability to waive all or a portion of the automated system upon a State's making certain showings. 42 U.S.C. § 652(d)(3). USHHS has statutory power to waive some or all requirements for the SDU. 42 U.S.C. §§ 654b(a)(3), 666(d). Despite the congressional grant of the power to waive and ACF's practice of granting waivers and conditional certification, USHHS refused to give South Carolina a hearing on these matters.

REASONS FOR GRANTING THE WRIT

I. THIS CASE PRESENTS THE COURT WITH THE OPPORTUNITY TO CLARIFY THE EXTENT TO WHICH THE CONGRESS MAY OFFER FINANCIAL INDUCEMENTS TO THE STATES WITHOUT CROSSING THE LINE WHERE PERMISSIBLE PRESSURE TURNS INTO UNCONSTITUTIONAL COMPULSION.

This case involves the apportionment of power between the States and the United States in areas of fundamental importance -- the care of children and the power of States to allocate power between branches of their own governments. In this case, the elected and appointed officials and the people of South Carolina challenge an unconstitutional usurpation of state authority by Congress in the area of child support and paternity establishment.

In *South Dakota v. Dole*, 483 U.S. 203 (1987), this Court recognized the power of Congress to offer financial incentives to the states and, consistent with the Spending Power, to attach conditions on the receipt of the federal funds by the states. *Id.* at 206. At the same time, however, this Court recognized that the Tenth Amendment limits congressional power when those financial incentives impermissibly cross the line where "pressure turns into compulsion." *Id.* at 211.

This case presents an opportunity for this Court to determine the limit on federal power under the Spending Clause recognized in *Dole* based upon a unique set of facts. These include large, long-term federal grants to which new restrictions, in areas only peripherally related to the original federal goal, were engrafted by amendment; huge, cumulative financial penalties for minor deviations over which the State had limited control; the heightened concern raised in areas traditionally left to the States under the Tenth

Amendment; and the statutory flexibility provided to the Secretary of Health and Human Services in the area of child support enforcement. These issues present an exceptionally important decision for this Court in the law of state and federal relations.

This case presents the last frontier of federalism for the Court– the Spending Clause. The limitations found in such decisions as *United States v. Lopez*, 514 U.S. 549, 564 (1995), *Seminole Tribe v. Florida*, 517 U.S. 44 (1996), *Printz v. United States*, 521 U.S. 898 (1997), *City of Boerne v. Flores*, 521 U.S. 507 (1997) and *New York v. United States*, 505 U.S. 144 (1992), will be rendered meaningless if Congress can tie any condition it wishes to any appropriation and yet, by doing so, deflect constitutional challenge as is suggested by the government and condoned by the Fourth Circuit Court of Appeals. In the Fourth Circuit opinion sustaining the grant of summary judgment to the Secretary of Health and Human Services, *Hodges v. Thompson*, 311 F.3d 316 (4th Cir. 2003), the court analyzed separately each of the four factors outlined in *South Dakota v. Dole*, 483 U.S. 203 (1987), for determining if conditional spending meets the requirements of the Constitution, and it also analyzed independently the possibility of coercion and the Tenth Amendment.[2] The court failed, however, to look at the totality of all these factors as applied to the actual facts of child support practices in South Carolina. The court also

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[2] The four enumerated limits on Congress' imposing conditions on the States via the spending power are: The conditional spending grant must (1) promote the general welfare, (2) articulate clearly the conditions on spending so that the States can exercise their choice knowingly, (3) be related to a federal interest in a national project or program, and (4) not force the States to violate other provisions of the Constitution. *South Dakota v. Dole*, 483 U.S. 203, 207-208 (1987). The Court then discusses the coercion/Tenth Amendment limitation separately. *Id.* at 211.

failed to apply a level of heightened and particularized concern in analyzing an intrusion by Congress into an area traditionally reserved to the States. It is the totality of these factors taken together which shows that the scheme enacted exceeds the constitutional powers granted to Congress.

A. The Tenth Amendment and the Decisions of this Court Required the Court Below To Evaluate the Entire Factual Situation with a Heightened Level of Scrutiny.

When analyzing the constitutionality of congressional action under an Article I power, the Court looks to the complete factual situation, not simply to one component. Thus, intrastate economic activity may still be regulated under the commerce clause if the factual circumstances surrounding that activity show that it will have a substantial impact on interstate commerce. *United States v. Lopez*, 514 U.S. 549, 558 (1995); *Wickard v. Filburn*, 317 U.S. 111, 128 (1942). Similarly, this Court looked beyond the attenuated relationship to commerce when analyzing the constitutionality of the Violence Against Women Act and took into account that the statute attempted to regulate an area traditionally reserved to the States, criminal and family law. *United States v. Morrison*, 529 U.S. 598, 617 (2000).

This Court recognizes a heightened concern where an administrative interpretation of a congressional enactment intrudes into an area of traditional state power. *Solid Waste Agency of No. Cook County v. Corps of Engineers*, 531 U.S. 159, 172-73 (2001). This Court has specifically recognized that the law of domestic relations, parent and child, and child support lie within the traditional sphere of exclusive state regulation. *Ohio ex rel. Popovici v. Agler*, 280 U.S. 379, 383-84 (1930). The Fourth Circuit did not apply this heightened level of concern and scrutiny to the conditional spending scheme, which intrudes into state regulation of parent-child relationships and child support, nor did it

consider the entirety of the factual situation. The Tenth Amendment requires this level of scrutiny to maintain the important balance between the States and the federal government.

Congress overstepped its constitutional bounds. Paternity and child support matters lie at the heart of family law issues, an area of law traditionally left to the States by the Constitution, Congress, and the courts. *Brzonkala v. Virginia Polytechnic Inst. and State Univ.*, 169 F.3d at 820, 842 (4th Cir. 1999)(en banc), aff'd sub nom. *United States v. Morrison*, 529 U.S. 598 (2000); see also, *Popovici v. Agler*, 280 U.S. 379, 383-84 (1930); *Caswell v. Lang*, 757 F.2d 608, 610 (4th Cir. 1985). If the tangential involvement of federal issues in the area of domestic relations law can open the entire field of family law to federal preemption through conditional spending tied back to non-child support programs, then the States' primacy in this area of government becomes illusory. The States lose their role as co-sovereigns and become merely enforcement arms of the United States.

B. The Court Below Failed To Analyze the Spending Conditions under the Totality of the Circumstances at the Time the State Accepted the Grants and the Ambiguity Created in the Federal Conditions by the Facts as They Existed at the Time of Acceptance.

The opinion of the Fourth Circuit in this matter fails to analyze the conditions on the two specific spending grants as of the time the States had to accept or reject the funds. An analysis of this factor taking into account the "totality of the circumstances" *at the relevant time* is required properly to address the factor in the *Dole* analysis of conditional spending grants.

Congress must inform its co-sovereigns, the States, of the specific and exact requirements created when a State accepts the funding. *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 17-18 (1981). As was noted by the Fourth Circuit in an earlier case, ambiguity in the requirements makes the mandated condition ineffective and frees the States of the constraint. *Commonwealth of Virginia Dept. of Education v. Riley*, 106 F.3d 559, 566-67 (4th Cir. 1997). The clear and unambiguous statement requirement takes on an especially important role when the State is asked to surrender core powers or functions reserved to it by the Tenth Amendment. *Id.* at 566.

Both the automated system and SDU mandates fail the test. The necessary regulations explaining the functionality required in the automated system did not appear until June of 1993, three fiscal years after States had to accept the automated system as part of the IV-D Plan requirements. Thus, no State knew precisely what was required when it first accepted funding tied to the automated system requirement. Since the SDU must be incorporated into the automated system, the failure to provide the automated system specifications in a timely manner applies with equal force to the SDU. 42 U.S.C. §§ 654a(g), 654b(a)(2)(B).

The statute also provides that the Secretary can waive all or a portion of the automated system or SDU requirements, 42 U.S.C. §§ 652(d)(3), 654b(a)(3), and USHHS engages in conditional certification which accepts partially complete automated systems and SDUs to meet plan requirements. Finally, the Secretary has broad discretion to excuse a State from any requirement that does not increase the effectiveness or efficiency of child support operations. 42 U.S.C. § 666(d). Thus, no State can know the requirement at any given time, nor can it know what effort will satisfy these standards.

Tying the automated system and SDU requirements to earlier appropriations for the child support program and AFDC/TANF creates ambiguity as well. No State knew, or could know, in 1975, when it began its child support program, that complex computer systems and centralized wage withholding offices would be required. Such requirements could not even have been imagined in the 1930s, when States began accepting AFDC/TANF appropriations.

The "real world" of child support and welfare programs – a world not mentioned in the Fourth Circuit opinion -- must intrude on this legal analysis. The States cannot provide the needed services to children living in poverty without federal funds on which the States have come to rely over the last 60+ years. If Congress can tie any administrative regulation it wishes to these earlier grants, then the spending power trumps any state initiative or method for handling the administration of child support and paternity, and a uniform federal law results. The interlocking problems — specific regulations issued after States accepted the requirement, the use of waiver, partial waiver, conditional certification, and excused non-compliance, and the linking back of the new mandates to appropriations that never contemplated such requirements — make the automated system and SDU mandates unconstitutional. The conditions placed on accepting the funds could not be clearly and unambiguously understood at the time the State accepted funding.

C. The Court Below Failed To Identify the Relationship Between the Conditions on the Spending at Issue and a Federal Interest in a Particular National Program or Project.

The United States failed to join the issue regarding the federal interest that must be present in any program in order to justify congressional conditional spending. The Fourth Circuit seemed to agree that simply because no other court had found a conditional spending grant unconstitutional on this basis, no in depth analysis was needed. If the general welfare interest articulated in Article I, Section 8, Clause 1 standing alone satisfied the standard for conditional spending, then constitutional limitations would be meaningless. Such an interpretation of the Spending Clause would render it the "trump" in the Constitution, taking on a role specifically refused to the Commerce Clause in *United States v. Morrison*, 529 U.S. 598 (2000).

Conditions on federal grants to the States must be reasonably related to a federal interest in a particular national project or program. *Dole*, 483 U.S. at 207; *Massachusetts v. United States*, 435 U.S. 444, 461-62 (1978). The Court will consider two questions: (1) does the condition further a particular federal interest in the program or project, and (2) does it do so without interfering inappropriately with state sovereignty. *Massachusetts v. United States*, 435 U.S. 444, 461-62 (1978). Spending conditions must bear a relationship to the purpose of the federal spending. *Dole*, 483 U.S. at 213 (O'Connor, J., dissenting); otherwise, the spending power would render the Constitution's grants of and limits upon federal power academic.

The original federal interest in child support was to recover federal welfare funds. H. Krause, *Child Support in America: The Legal Perspective*, pp. 281-353 (1981); L. Elrod, "The Federalization of Child Support Guidelines," 6 J.

Am. Acad. Matrim. Law. 103, 109-11 (1990). Congress influenced the States to adopt procedures to effect these goals by offering to pay a percentage of the cost of a program devoted to assisting custodial parents in obtaining child support and providing for the repayment of welfare benefits when child support is collected. 42 U.S.C. §§ 657(a)(1), (a)(2).

"The changes mandated by Congress since 1984 already seem to sweep far more broadly than necessary simply to protect the public fisc." A. Estin, at 554. Instead, Congress seems intent on setting up a national child support system based on federal law and using state authority and resources. *Id.*; H.R. Conf. Rep. No. 98-925 at 29 (1984), reprinted at 1984 U.S.C.C.A.N. 2447.

The Fifth Circuit recently found no constitutional authority to extend federal criminal law to employees of state agencies which receive federal money where the employee is not involved in administering the federal program. *United States v. Phillips*, 219 F.3d 404 (5th Cir. 2000). The government relied on a statute making it a crime to divert funds from programs which were state administered but partially federally funded. 18 U.S.C. § 666. The court found that the statute, enacted pursuant to the Spending Clause, must be restricted to the theft of federal funds. Otherwise, the condition had no relationship to the federal interest in the program. *Phillips*, 219 F.3d 414-15.

Some child support cases involve families receiving welfare — in South Carolina's most recent year-end study, about 14 percent. Likewise, some cases involve interstate payments — nationally, about 28 percent. This does not open the gates to plenary federal regulation of all child support and paternity cases. The automated system and SDU mandates amount to federal usurpation of the detailed administration and legal rules for determining paternity and child support. Paternity and child support matters lie at the

heart of family law issues, an area of law traditionally left to the States by the Constitution, Congress, and the courts. *Brzonkala*, 169 F.3d at 842.

D. The Court Below Failed Properly To Analyze the Coercive Effect of the Conditional Spending Scheme as Required by This Court and the Tenth Amendment.

The Fourth Circuit analyzed coercion solely from the standpoint of the amount of the alternative penalty. Taking this Court's comment that a penalty of 5 percent of federal highway funds for failure to comply did not amount to coercion, the panel stopped with a similar analysis. *Dole*, 483 U.S at 211. That analysis fails to take into account the actual circumstances of this case.

In *Dole*, South Dakota lost, at most, 5 percent of its federal highway funds if it did not comply with the federal mandate to raise the drinking age. In this case, if South Carolina does not comply with the federal mandates for automated systems and SDU, South Carolina loses the entire TANF and IV-D appropriation, approximately $122,000,000 each year in TANF funds and $24,000,000 each year in IV-D funds – a total of $146,000,000 annually. This compares to the annual expenditure of $5,500,000 for the automated system and SDU mandates. This penalty is so disproportionate that it amounts to coercion.

Congress attempts to buy the States' regulation of child support and paternity law according to its detailed whims by way of the automated system and SDU mandates. It does so by threatening the 60+ year old TANF funding and the 25+ year old IV-D funding. Persuasion becomes coercion when a funding grant is, in actuality, "a scheme for purchasing with federal funds submission to federal regulation of a subject reserved to the States . . . ." *United States v. Butler*, 297 U.S. 1, 72 (1936). The Fourth Circuit

failed to apply the rule that any analysis of coercion through conditional spending is an issue of fact. *Steward Mach. Co. v. Davis*, 301 U.S. 548, 585-90 (1937). Issues of fact cannot be resolved on summary judgment.

The present case illustrates the coercive impact of the chain reaction that is put in motion by a State's choice to deviate from one of the state plan requirements. South Carolina would prefer not to implement the SDU requirement because it will increase the time between the receipt and disbursement of child support payments and will increase the amount of unallocated payments, while having no discernible benefit. If the State exercised this choice and declined the funds for the SDU, the remainder of the State's federal child support funds would also be withheld. (The alternative penalties would be of no help, as they would only be available if the State were making a good faith effort to comply with the SDU provision.) Lacking an approved state child support plan, the State would also lose its federal TANF funds. Under these circumstances, the State has no real choice to exercise its policy preference.

Failure to curb Congress' power under the Spending Clause produces the same results found unacceptable under the broad interpretation of the Commerce Clause (*Lopez*), the power over Indian tribes (*Seminole Tribe*), the Fourteenth Amendment (*City of Boerne*), or the Copyright and Patent Clause (*Florida Prepaid Postsecondary*). Otherwise what would prevent Congress from *de facto* overruling these cases and requiring the States to enact the regulatory schemes already held unconstitutional as conditions for receiving federal funds? If a State refused, then that State would receive no federal funding for education, welfare, or highways that year. Given the vast financial resources of the modern federal government, an unlimited Spending Clause destroys the constitutional balance between the States and the federal government and makes the Constitution's guarantee of partial sovereignty to the States illusory. *See,*

South Dakota v. Dole, 483 U.S. 203, 214-17 (1987) (dissent of Justice O'Connor). When Spending Clause-based conditional funding intrudes into areas left to state regulation without any federal reason other than a generalized belief that the federal government has a better plan, then such conditions violate the Tenth Amendment.

The "alternative penalty" focused on by the Fourth Circuit does not relieve the coercive effect. Refusal of the condition results in the full penalty; a State must engage in good faith efforts to comply in order to qualify for the alternative penalty. 42 U.S.C. § 655(a)(4) and (5). The alternative penalty costs 30 percent of all child support funds at its maximum amount, an amount still disproportionate to the automated systems and SDU funding. In *Dole*, absolute refusal only resulted in a 5 percent loss of funding; here, absolute refusal results in termination of all federal funding for TANF and IV-D. The Court of Appeals applied an incorrect parameter to analyze coercion by relying on the amount of the alternative penalty. Certiorari is necessary to correct this oversight.

II. THE COURT OF APPEALS FAILED TO ADDRESS THE SECRETARY'S DISCRETION TO WAIVE ALL OR PART OF THE REQUIREMENTS AND THE PRACTICE OF CONDITIONAL CERTIFICATION, EITHER OF WHICH COULD AVOID THE PENALTIES ASSESSED AGAINST SOUTH CAROLINA.

The court below restricted its analysis to a review of the Secretary's discretion to alter the amount of the alternative penalty. South Carolina did argue that the Secretary had discretion to change the amount of the alternative penalty, but instead presented the legal and factual basis for the Secretary's discretion to waive in whole or in part both the automated system and SDU requirements and the practice of conditional certification. In order for the

Secretary to make an intelligent finding of whether or not South Carolina's current system meets federal goals and, therefore, South Carolina is entitled to a waiver which would exempt it from technical compliance, the Secretary must hold a full evidentiary hearing as provided for in the ACF procedures. The opinion does not address this aspect of South Carolina's discretion argument.

The Secretary or his designee (1) can waive all or any part of the automated system requirement, 42 U.S.C. § 652(d)(3); (2) can waive all or any part of the SDU requirement, 42 U.S.C. § 654b(a)(3); (3) can waive any IV-D requirement that adversely affects a state program's efficiency and effectiveness, 42 U.S.C. § 666(d); and (4) need only find "substantial compliance" with the statutory requirements to continue federal funding, 42 U.S.C. § 609(a), 45 C.F.R. § 305.20; *Blessing v. Freestone*, 520 U.S. 329, 335 (1997). The Secretary or his designee may also reduce or waive penalties in the statutory scheme. 42 U.S.C. § 609(c). Each of these actions involves discretion and contemplates something less than absolute compliance with every statutory sub-requirement.

The court below improperly interpreted the statute's use of the word "must" in Section 654 outlining what must be in a state plan, as allowing no discretion. This interpretation ignores the clear grant of discretionary authority to waive in Sections 652, 654b, and 666 and fails to read the statute as a whole, *King v. St. Vincent's Hospital*, 502 U.S. 215, 221 (1991); *O'Connell v. Shalala*, 79 F.3d 170, 176 (1st Cir. 1996), thus violating a fundamental principle of statutory construction.

The actions of ACF prevented South Carolina from explaining that it is qualified for continued funding based on substantial compliance and waiver as allowed in the statute. An ACF action transmittal created a right to discovery and a hearing. The court below failed to address the issue of

discretion to find alternative compliance and the failure of USHHS to allow a hearing on this issue. These procedural deficiencies in the proceedings below underscore the importance of the constitutional questions presented on certiorari in this case.

III. SOUTH CAROLINA RAISED THE ISSUE OF ITS RIGHT TO LITIGATE A DENIAL OF DUE PROCESS BY USHHS IN THE REDUCTION OR WITHHOLDING OF PROGRAM BENEFITS AS *PARENS PATRIAE* FOR ITS CITIZENS IN THE COURT BELOW.

South Carolina raised the issue of its status to argue due process on behalf of its citizens in the court below as shown above. (Docket Entry 33, Plaintiffs' Memorandum in Opposition to Defendants' Motion to Dismiss or in the Alternative for Summary Judgment at Page 17-18 and Docket Entry 39, Plaintiffs' Memorandum of Authorities Regarding Federal Jurisdiction and Standing at Page 9-10). The Court below failed to address this argument because the panel did not believe it had been raised below. Certiorari is necessary to address this argument.

CONCLUSION

For the foregoing reasons and because of the important issues of federalism at stake, to allow an analysis of the totality of all circumstances surrounding the conditional spending grants at issue, as well as to address the arguments overlooked in the decision below, Petitioners request this Court to grant their Petition for a Writ of Certiorari.

Respectfully submitted,

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No.

In The Supreme Court of the United States

Marc Sanford, in his official capacity as Governor of the State of South Carolina, Jean Hoefer Toal, in her official capacity as Chief Justice of South Carolina, the South Carolina Department of Social Services, the State of South Carolina, the State of South Carolina on behalf of the people of South Carolina, Jane and John Doe and those similarly situated,.....Petitioners,

v.

Tommy G. Thompson, in his official capacity as the Secretary of the United States Department of Health and Human Services, Wade F. Horn, Ph.D., in his official capacity as Assistant Secretary of the United States Department of Health and Human Services for Children and Families, and the United States Department of Health and Human Services,.....Respondents.

APPENDIX

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UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

JIM HODGES, in his official capacity as Governor of the State of South Carolina; JEAN HOEFER TOAL, in her official capacity as Chief Justice of South Carolina; SOUTH CAROLINA DEPARTMENT OF SOCIAL SERVICES; STATE OF SOUTH CAROLINA; PEOPLE OF SC, on Behalf of the State of South Carolina; JOHN DOE; JANE DOE, and those similarly situated,

Plaintiffs-Appellants,

v.

TOMMY G. THOMPSON, SECRETARY, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES; WADE F. HORN, Ph.D. in his official capacity as Assistant Secretary of the United States Department of Health and Human Services for Children and Families; U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES,

Defendants-Appellees.

No. 00-2512

Appeal from the United States District Court
for the District of South Carolina, at Columbia.
Julian Abele Cook, Jr., Senior District Judge, sitting by designation.
(CA-00-2048-3-17)

Argued: December 6, 2001

Decided: November 15, 2002

Before WIDENER, NIEMEYER, and MOTZ, Circuit Judges.

Affirmed by published per curiam opinion.

COUNSEL

ARGUED: Marcus Angelo Manos, NEXSEN, PRUET, JACOBS & POLLARD, L.L.C., Columbia, South Carolina, for Appellants. Gregory George Katsas, Appellate Staff, Civil Division, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C., for Appellees. **ON BRIEF:** Wilburn Brewer, Jr., NEXSEN, PRUET, JACOBS & POLLARD, L.L.C., Columbia, South Carolina; A.E. Dick Howard, Charlottesville, Virginia, for Appellants. Stuart E. Schiffer, Acting Assistant Attorney General, Scott N. Schools, United States Attorney, Jacob M. Lewis, Peter J. Smith, Appellate Staff, Civil Division, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C., for Appellees.

OPINION

PER CURIAM:

The Governor of South Carolina appeals the grant of summary judgment to the Secretary of the United States Department of Health and Human Services in the State's action seeking injunctive and declaratory relief from conditions imposed for federal funding of the Temporary Assistance to Needy Families (TANF) program.

South Carolina challenges the district court finding that Congress acted within its Spending Clause authority when it conditioned States' receipt of federal funds under the child support enforcement program and the TANF program on compliance with the requirement that States develop and maintain automated child support enforcement systems and that such a condition was not so coercive as to violate the Tenth Amendment. The State further alleges the district court

erred when it found that the Secretary did not have the discretion to amend the statutory penalty structure for a State's noncompliance with the child support systems requirements. In addition, South Carolina contends the court erred in finding that the State could not invoke the protections of the Due Process Clause. After considering the parties' briefs and the record, and following oral argument, we affirm substantially on the reasoning of the district court.

I.

The district court opinion contains a comprehensive history, the details of which need not be repeated here, of the federal government's longstanding involvement in child support enforcement programs and related federal efforts to work with the States to solve the serious problem of nonpayment of child support. See *Hodges v. Shalala*, 121 F.Supp.2d 854 (D.S.C. 2000). Currently, as a condition of receipt of any federal funding under Title IV-D of the Social Security Act, 42 U.S.C. §§ 651-669, States must have an approved state plan for child and spousal support that meets all the requirements of 42 U.S.C. § 654. Among the prerequisites for approval of a Title IV-D Plan are the requirements that the State establish and operate an automated data processing and information retrieval system, see 42 U.S.C. § 654(24), and a state child support disbursement unit (SDU), see 42 U.S.C. § 654(27)(A). South Carolina concedes that it has neither a federally certifiable statewide automated system for child support nor an SDU. See *Hodges*, 121 F. Supp. 2d at 861.

Without an approved state plan, a State may lose federal funding under both Title IV-D (child support enforcement) and Title IV-A (TANF). See 42 U.S.C. § 655(a)(1)(A); 42 U.S.C. § 602(a)(2). Alternatively, a State may opt for an alternative penalty in lieu of disapproval of their state plan and the withholding of federal funds if the State is making a good faith effort to comply with the program's requirements and the State has submitted a corrective compliance plan. See 42 U.S.C. § 655(a)(4). South Carolina has elected to incur the alternative penalty.

We exercise jurisdiction pursuant to 28 U.S.C. § 1291 and review a district court's grant of summary judgment *de novo*. See *United States v. Kanasco, Ltd.*, 123 F.3d 209, 210 (4th Cir. 1997).

II.

We turn first to South Carolina's contention that the federal government's requirements and penalties associated with the state-wide automated systems, which South Carolina failed to provide, exceed Congressional authority under the Spending Clause and the Tenth Amendment.

Consistent with its Spending Power, Congress may attach conditions on the receipt of federal funds. See *South Dakota v. Dole*, 483 U.S. 203, 206 (1987). The Spending Power is not unlimited, of course, and the Supreme Court has recognized four general limitations: spending must be in pursuit of the general welfare; any attached conditions must be unambiguous; conditions must also be related to a federal interest; and, the obligations imposed by Congress may not violate any independent constitutional provisions. See *Dole*, 483 U.S. at 207-08.

The district court found that "Congress made a considered judgment that the American people would benefit significantly from the enhanced enforcement of child-support decrees and the diminution of the number of parents who are able to avoid their obligations simply by moving across local or state lines." *Hodges*, 121 F. Supp. 2d at 873. Thus, like the district court, we are satisfied that Congress acted in the general welfare when it enacted the child support enforcement programs and the associated funding conditions under Title IV-D.

South Carolina's contention that the Title IV-D conditions are ambiguous is without merit. The statute expressly provides that compliance with the automated system and SDU requirements is a condition of approval of a state plan. See 42 U.S.C. § 654(16), (24)(27)A. We agree with the district court that the clear and unequivocal statement of the required conditions in the statute enabled South Carolina to "exercise [her] choice knowingly, cognizant of the consequences of [her] participation." See *Dole*, 483 U.S. at 207 (citations omitted).

A third limitation on the Spending Power requires that conditions "bear some relationship to the purpose of the federal spending." *New York v. United States*, 505 U.S. 144, 167 (1992) (citing *Dole*, 483 U.S. at 207-08, n.3). Here, there is a complementary relationship

between efficient child support enforcement and the broader goals of providing assistance to needy families through the TANF program. Establishing paternity and collecting child support may enable families to reduce their dependence on the welfare system, and both programs are intended to reduce the incidence of poverty among children and families. The Supreme Court has recognized that Co..gress intended these linkages between child support programs and the TANF program. See *Sullivan v. Stroop*, 496 U.S. 478, 484 (1990) (concluding Congress intended the two programs to "operate together closely to provide uniform levels of support for children of equal need").[1]

South Carolina does not contend that the Title IV-D conditions violate the fourth limitation on the Spending Power — that the conditions violate any independent Constitutional prohibition, rather it raises a Tenth Amendment[2] challenge. As we have recently reconfirmed, "the Tenth Amendment itself *does not* act as a constitutional bar to Congress's spending power; rather, the fourth restriction on Congress's spending power stands for the more general proposition that Congress may not induce the states to engage in activities that would themselves be unconstitutional." *James Island Pub. Serv. Dist. v. City of Charleston*, 249 F.3d 323, 327 (4th Cir. 2001) (citing *Kansas v. United States*, 214 F.3d 1196, 1199 (10th Cir. 2000)) (italics in original). We therefore next consider South Carolina's Tenth Amendment argument, not as a limitation related to the Spending Clause, but as an independent constitutional challenge.

South Carolina argues that the coercive effect of the Title IV-D conditions run afoul of the protections of the Tenth Amendment. The Supreme Court has recognized that the Tenth Amendment may be implicated when the financial incentives offered by the federal government to the States cross the impermissible line where "pressure

[1]*Sullivan* considered the relationship between child enforcement programs and Aid to Families with Dependent Children (AFDC). 496 U.S. at 478. TANF is a block grant program established in 1996 as the successor to the AFDC program. See 42 U.S.C. §§ 601-618.

[2]The Tenth Amendment states: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." U.S. Const. amend. X.

turns into compulsion." See *Dole*, 483 U.S. at 211 (citations omitted). Congress may use its Spending Power to influence a State's legislative choices by providing incentives for States to adopt certain policies, but may not compel or coerce a State, or go so far as to "commandeer the legislative processes of the States by directly compelling them to enact and enforce a federal regulatory program." See *New York v. United States*, 505 U.S. at 161, but Congress, under the Commerce Clause, may offer the States a choice of regulation under federal control or preemption under federal regulation. See *Hodel v. Virginia Surface Mining & Reclamation Assn., Inc.*, 452 U.S. 264, 288 (1981).

The district court found that, based on the State's own admission, the alternative penalty, which South Carolina has now elected, would result in the loss of a small fraction of the State's TANF funds and that such a proportion was noncoercive. Given the linkages between child support enforcement and aid to needy families and the level of the alternative penalty, we agree with the district court's conclusion that "the Title IV-D conditions are not so overbearing as to create an unconstitutional compulsion." *Hodges*, 121 F.2d at 875.

South Carolina next contends that the Secretary of the Department of Health and Human Services (HHS) has the discretion to deviate from the alternative penalty structure of Title VI-D in order to respond to the peculiar circumstances that led to South Carolina's noncompliance. Specifically, South Carolina argues that its inability to comply with the automated system and SDU requirements was caused by the failure of its prime contractor, Unisys, to deliver on its contract with the State. South Carolina maintains that because its noncompliance was no fault of its own and its alternative systems are in substantial compliance with the goals of the statute, the Secretary abused her discretion by refusing to grant South Carolina an evidentiary hearing and waive or amend the alternative penalty for noncompliance.

We have examined the penalty provisions of the statute and, like the district court, cannot find the discretion South Carolina envisions. The wording of the statute is plain. Where the Secretary determines that a state plan would be disapproved, and where the State has made and continues to make a good faith effort to comply and has submit-

ted a corrective compliance plan, "the Secretary shall not disapprove the State plan . . . and *the Secretary shall reduce the amount otherwise payable to the State* [by the designated alternative penalty]." 42 U.S.C. § 655(a)(4)(A)(i)(II) (emphasis added). Again, we agree with the district court that "[b]y the text of the statute, the legislature has prescribed that the Secretary shall enforce this penalty." *Hodges*, 121 F.2d at 879. Absent any discretion available to the Secretary to impose a lesser penalty than the alternative penalty as outlined in the statute, South Carolina's assertion that it is entitled to an evidentiary hearing must also fail.[3]

III.

For the foregoing reasons, we are of opinion that the Title IV-D provisions are constitutionally valid under the Spending Clause and the Tenth Amendment and that the Secretary lacks discretion under Title IV-D to deviate from the penalty provisions.

The judgment of the district court is accordingly

AFFIRMED.

[3]In the district court, South Carolina asserted a Due Process claim which the district court denied. The court concluded that the "State cannot invoke the protections of the Fifth Amendment with claims that [the State] has been harmed." *Hodges*, 121 F.2d at 865. South Carolina does not take issue with the district court's holding, but rather, on appeal it asserts that the State is entitled to assert a Due Process claim on behalf of its citizens. Because this contention was never properly presented to the district court, we do not consider it now. See *McGowan v. Gillenwater*, 429 F.2d 586, 587 (4th Cir. 1970).

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

FILED
January 13, 2003

No. 00-2512

CA-00-2048-3-17

JIM HODGES, In his official capacity as Governor of the State of South Carolina; JEAN HOEFER TOAL, in her official capacity as Chief Justice of South Carolina; SOUTH CAROLINA DEPARTMENT OF SOCIAL SERVICES; STATE OF SOUTH CAROLINA; PEOPLE OF SC, on behalf of the State of South Carolina; JOHN DOE; JANE DOE, and those similarly situated

Plaintiffs - Appellant

v.

TOMMY G. THOMPSON, SECRETARY, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES; WADE F. HORN, PhD in his official capacity as Assistant Secretary of the United States Department of Health and Human Services for Children and Families; U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES

Defendants - Appellees

ON PETITION FOR REHEARING AND REHEARING EN BANC

The appellants' petition for rehearing and rehearing en banc was submitted to this Court.

As no member of this Court or the panel requested a poll on the petition for rehearing en banc, and

As the Panel considered the petition for rehearing and is of the opinion that it should be denied,

IT IS ORDERED that the petition for rehearing and rehearing en banc is denied.

For the Court,
/s/ Patricia S. Conner

CLERK

JIM HODGES, et al.,

Plaintiffs,

vs.

DONNA SHALALA, et al.,

Defendants.

Case No. 3:00-2048-17
Honorable Julian Abele Cook, Jr.

ORDER

The State of South Carolina ("State"),[1] as well as other persons, filed this lawsuit in an attempt to prevent the United States from penalizing it for failing to meet certain conditions that were tied to its receipt of federal money. Specifically, the State accepted funds from the United States under the Temporary Assistance to Needy Families Program ("TANF") upon the conditions that it would (1) implement and maintain a centralized computer system, with which to track those persons who are responsible for paying child support, and (2) create a central child-support disbursement unit. Although substantial efforts were made by the State to comply with its obligations under TANF, its attempts have not yet met with success.

The State has asked the Defendant, Donna Shalala, in her official capacity as the Secretary of the United States Department of Health and Human Services ("Department"), to exercise her discretion and grant it an opportunity to

1. Although South Carolina's governor, Jim Hodges, is the lead Plaintiff in this case, the Court will refer to the State as the primary claimant for reasons of rhetorical consistency in light of the jurisdictional findings that are set forth in Section IV.

comply with the TANF requirements at a later time without incurring any substantial penalty. According to the pleadings, there are indications that Shalala will not grant the State's request because, in her opinion, she does not possess any discretionary authority to do so. Thus, the purpose of this litigation is to determine the limits, if any, of the Secretary's discretion and, in the meantime, to forestall the issuance of an administrative decision that might terminate the State's ability to elect a lesser alternative penalty.

The parties have deemed this case to be one of substantial importance to them since hundreds of millions of dollars, as well as the balance of power between the federal and state governments, are at stake. Unfortunately, because of the nature of these grants, many of the poorest residents of South Carolina are caught in the middle of this dispute.

On August 11, 2000, Secretary Shalala filed a motion to dismiss the lawsuit.[2] On the same day, the State filed a motion for a second preliminary injunction. For the reasons that are set forth below, Shalala's motion is granted and the State's motion is denied.[3]

I

The history surrounding this case is generally undisputed. The nonpayment of child support has been a continuing problem in the United States for several decades. *See generally* Deborah L. Rhode, *Feminism and the State*, 107 Harv. L.Rev. 1181, 1200 (1994) ("Inadequate child-support standards and enforcement structures ... result in

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[2] Alternatively, she seeks the entry of a summary judgment in her favor pursuant to Federal Rule of Civil Procedure 56.

[3] The date upon which this Order shall be effective is set forth below in Section IX.

large financial gaps between custodial and non-custodial households.... Of all noncustodial fathers, less than half provide any child support and, of those under court order, only half pay the full award. Although some of these men are themselves impoverished, the majority are in a position to contribute to their children's welfare."). Although once considered an issue of local family law, the problem has taken on national dimensions. *See, e.g.*, 132 Cong. Rec. S5303-04 (1986) (statement of Sen. Bradley) ("Child poverty in this country has reached alarming proportions. One in four children under the age of 5 is living in poverty. In single parent families, the figure is more staggering, with approximately one-half living below the poverty line. In my home State of New Jersey, 22 percent of households with children under 18 are headed by a single parent. In New Jersey, $44 million is paid monthly in AFDC payments, with only about 10 percent recouped through child support payments.").

Given the particularly harsh effects of nonpayment on poor families, the federal and state governments, including that of South Carolina, have long cooperated in an attempt to assure that those children and parents, who live in poverty and are entitled to receive child support, get the necessary private and public assistance. In 1975, Congress initiated a series of aggressive steps to remedy such nonpayment when it passed the Child Support Enforcement Act, Title IV, Part D of the Social Security Act, 42 U.S.C. §§ 651-669 (1975) [hereinafter *Title IV-D*]. Therein, it created an enforcement program that would be (1) prescribed and administered by the federal government as a prerequisite to the receipt of any enhanced federal funding, and (2) operated by the states.

Following the enactment of this Act, South Carolina

acted quickly to come into compliance with these initial requirements. By 1976, the State had devised and implemented a uniform family court system to address the situation. The program was to be administered by each of the forty-six county clerks of the State's courts. In reliance upon local knowledge and relationships, the system was able to satisfy most claims for payment within a period of twenty-four hours.

However, as time passed, Congress developed a different view as to the effectiveness of the state-run systems--especially with regard to interstate enforcement efforts. *See, e.g.*, 132 Cong. Rec. S5303-04 (1986) (statement of Sen. Bradley) ("What often happens is that the noncustodial parent, for a variety of reasons, moves to another State. At that point, child support enforcement efforts too frequently confront serious problems. The noncustodial parent frequently ceases to pay child support and a large debt accrues. Soon the debt is out of hand and the noncustodial parent seeks relief from this debt."). Hence, Congress enacted the Family Support Act in 1988, in which it amended *Title IV-D* to require all of the participating states to create and maintain automated computer systems that would facilitate enforcement. The federal government provided matching funds at a rate of ninety (90) percent during the development phase of the project, and the State contracted with the Unisys Corporation ("Unisys") to build the system.

In or around 1996, two events dramatically changed the relationship between the State and the Secretary. First, the State alleges that it learned for the first time that Unisys had failed to fulfill its contractual obligations to build a system that would meet federal standards. In the opinion of the State, the failure by Unisys was an act of "actual fraud."

(Pls.' Mem. Opp'n Mot. Dismiss at 3.) As a result of these ostensible misdeeds, the State was falling out of compliance with federal regulations. At about the same time, Congress enacted the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, which further amended the conditions under *Title IV-D* by requiring the states' enforcement systems to be centralized and statewide in nature.

The 1996 amendment was part of a broad reaching attempt by Congress to overhaul the federal government's public assistance program and supplant it with the TANF Program. Under the TANF Program, the participating states would receive federal block grants to design their own public assistance programs in exchange for their agreement to (1) work toward federal program goals, and (2) satisfy a series of effort and performance requirements. These federal monies were to be distributed to the poorest families within each participating state so that its recipients could obtain the basic necessities of life. The parties agree that in order for a state to receive this funding, it must have a *Title IV-D* plan that has been approved by the federal government.[4] *See* 42 U.S.C. §§ 602(a)(2), 655(a)(1) (2000).

In 1998, the relationship between the State and the federal government became more complicated. On January 27 of that year and despite the State's allegations of fraud by Unisys, the Secretary sent a notice of her intent to disapprove its child-support enforcement systems. Additionally, Congress enacted the Child Support Performance and

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[4] Here, the pleadings suggest that the State has been unable to meet these conditions because of the alleged contractual default by Unisys. Thus, it arguably stands to lose the entirety of its TANF funding for the next fiscal year if it does not submit a plan that will certify that it is operating an automated system as mandated by federal law.

Incentive Act of 1998. Therein, it created a graduated financial penalty system, which could be adopted by a participating state in lieu of a disapproval of its plan by the Secretary (i.e., for its failure to have an automated data processing or disbursement system in place on the prescribed date). The State has only requested the alternative penalty with respect to a condition that it have a centralized payment-disbursement system. However, it did not accept the alternative penalty with respect to its statewide data and information system, even though such system is admittedly noncompliant with the statute.

Thereafter, the Secretary designated a presiding officer to make recommended findings and a proposed decision that would address the State's data system plan. On May 18, 2000, the presiding officer issued, among other things, the following recommended findings: "that having an automated system in effect is a requirement for approval of a state IV-D plan, and that [the Administration for Children and Families] has not been shown to have the authority to excuse South Carolina's conceded failure to comply with the automated system requirement by fashioning some sanction short of disapproval in its state IV-D plan." (Defs.' Mem. Supp. Mot. to Dismiss Ex. A at 2; Pls.' Opp'n Mot. Dismiss Ex. J at 3.) On the basis of these recommended findings, the presiding officer proposed the disapproval of the State's *Title IV-D* plan. (Defs.' Mem. Supp. Mot. to Dismiss Ex. A at 17; Pls.' Opp'n Mot. Dismiss Ex. J at 18.) This lawsuit followed.[5] After an Assistant

[5] The Complaint asserts eight counts. Count I seeks a declaration that, in cases of noncompliance, the Secretary has the discretion to impose a sanction which is less than a full plan disapproval. Count II asks the Court to declare that an evidentiary hearing is warranted as to the State's reasons for its noncompliance (just in case the Secretary has the discretion that is the subject of Count I). Count III requests a determination that the conditions of *Title IV-D* are not rationally related

Secretary issued a brief statement on August 9, 2000, in which the Secretary was advised to reach the same conclusion, (Defs.' Mem. Supp. Mot. to Dismiss Ex. B), the parties filed the instant motions.

The monetary sums at stake in this case are substantial. If the alternative penalties are elected, the parties agree that the State must pay up to $6,396,506 for fiscal year 2000, approximately $5,920,007 for fiscal year 2001, and $7,104,009 for each subsequent fiscal year in which a federal certified child support collection system is not in place. (Defs.' Mem. Supp. Mot. to Dismiss Ex. C at 17; Pls.' Opp'n Mot. Dismiss Ex. K at 18.) On the other hand, the State can continue with its administrative appeal and await the Secretary's final order. If the Secretary rejects the presiding officer's proposed decision, the State probably will prevail. Otherwise, it (1) can no longer elect the alternative penalty and (2) could suffer the loss of $123,647,856 for fiscal year 2000, $126,489,460 for fiscal year 2001, and $129,672,056 for fiscal year 2002. (Pls.' Opp'n Mot. Dismiss Ex. D at ¶ 16.)

II

The State brought this case in an effort to obtain declaratory and injunctive relief. The Complaint, in part, incorporates allegations that Congress exceeded its power

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to the articulated purpose of the statute. Count IV alleges that the federal government has breached an implied contract with the State by disregarding a covenant of good faith and fair dealing. Counts V and VI argue that the conditions of *Title IV-D* violate the Spending Clause and Tenth Amendment of the Constitution, respectively. Count VII asserts that the actions of the federal government in this case are violating the Due Process Clause of the Fifth Amendment. Finally, Count VIII is a prayer for injunctive relief to forestall the application of the statutory penalties that are discussed above until this case can be decided on the merits.

under the Spending Clause, U.S. Const. art. 1, § 8, cl. 1, when it required the several states to adopt the child support enforcement mechanisms at issue. As such, the State maintains that Congress encroached upon those powers that were reserved to the states and individuals by the Tenth Amendment. The State also argues that the failure of Congress to afford it and its citizens a meaningful judicial hearing for the impending deprivation of federal funds constitutes a violation of the Due Process Clause of the Fifth Amendment. In response, Secretary Shalala filed a motion to dismiss the case. In her pleadings, she argues that the State must exhaust certain administrative remedies before obtaining judicial review and, in any event, the Constitution and federal law do not entitle it to the requested relief.

While considering the parties' arguments, the Court raised other jurisdictional questions as to whether this action is cognizable and justiciable.[6] For the reasons that are set

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[6] In particular, the Court questioned whether it lacked subject matter jurisdiction due to the absence of a cognizable federal claim, a justiciable controversy or a waiver of the sovereign immunity of the United States. *See generally* Richard H. Fallon, Daniel J. Meltzer & David L. Shapiro, *Hart & Wechsler's the Federal Courts and the Federal System* 375 (4th ed.1996); Henry M. Hart, Jr., *The Power of Congress to Limit the Jurisdiction of the Federal Courts: An Exercise in Dialectic*, 66 Harv. L.Rev. 1362, 1366-71 (1953) (discussing tension between constitutional rights and doctrine of sovereign immunity and observing that "[t]he multiplicity of remedies, and the fact that Congress has seldom if ever tried to take them all away, has presented the issue from ever being squarely presented."). It is well settled that the federal courts have a continuing duty to independently evaluate their jurisdiction in the cases that are before them. *See generally Duke Power Co. v. Carolina Envtl. Study Group, Inc.*, 438 U.S. 59, 68, 98 S.Ct. 2620, 57 L.Ed.2d 595 (1978) ("[W]e must address the question of whether the District Court had subject-matter jurisdiction ... despite the fact that none of the parties raised the issue and the District Court did not consider it."); *Clark v. Paul Gray, Inc.*, 306 U.S. 583, 59 S.Ct. 744, 83 L.Ed. 1001 (1939) (Court had duty to raise question as to jurisdiction when it appeared doubtful during argument that matter in controversy exceeded requisite statutory

forth below, the Court concludes that this lawsuit is properly subject to adjudication, but the Constitution and federal laws do not support the State's request for relief. Thus, Secretary Shalala is entitled to the disposition that she seeks in this litigation.

III

The State has invoked the federal question jurisdiction of the Court. See 28 U.S.C. § 1331. In *Duke Power Co. v. Carolina Envtl. Study Group, Inc.*, the Supreme Court stated that

> [f]or purposes of determining whether jurisdiction exists under § 1331(a) to resolve [these] claims, it is not necessary to decide whether [the] alleged cause of action against the [agency] based directly on the Constitution is in fact a cause of action "on which [the claimants] could actually recover." Instead, the test is whether" 'the cause of action alleged is so patently without merit as to justify ... the court's dismissal for want of jurisdiction.' " * * * The further question of whether [a] cause of action under the Constitution is one generally to be recognized need not be decided here. The question does not directly implicate our jurisdiction ....

438 U.S. 59, 70-71, 98 S.Ct. 2620, 57 L.Ed.2d 595 (1978) (quoting *Bell v. Hood*, 327 U.S. 678, 682, 683, 66 S.Ct. 773,

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amount). Through a letter on September 18, 2000, the Court instructed the parties to provide supplemental briefs in an attempt to identify what, if any, federal claim permits a finding of jurisdiction and whether the State, or any other Plaintiff, has standing to present the claim.

90 L.Ed. 939 (1946), and *Hagans v. Lavine*, 415 U.S. 528, 542-43, 94 S.Ct. 1372, 39 L.Ed.2d 577 (1974)); *see also Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 89, 118 S.Ct. 1003, 140 L.Ed.2d 210 (1998) (Federal courts may only dismiss case "for lack of subject-matter jurisdiction because of the inadequacy of the federal claim ... when the claim is 'so insubstantial, implausible, foreclosed by prior decisions of th[e Supreme] Court, or otherwise completely devoid of merit as not to involve a federal controversy.' ") (quoting *Oneida Indian Nation of N.Y. v. County of Oneida*, 414 U.S. 661, 666, 94 S.Ct. 772, 39 L.Ed.2d 73 (1974); citing *Romero v. International Terminal Operating Co.*, 358 U.S. 354, 359, 79 S.Ct. 468, 3 L.Ed.2d 368 (1959)).[7] In establishing this jurisdictional standard, the *Duke Power* Court considered its decisions in *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388, 91 S.Ct. 1999, 29 L.Ed.2d 619 (1971), and Hagans, 415 U.S. 528, 94 S.Ct. 1372, 39 L.Ed.2d 577, wherein it permitted the direct examination of the constitutionality of federal action, "as well as the general admonition that 'where federally protected rights have been invaded ...courts will be alert to adjust their remedies so as to grant the necessary relief.' "*Duke Power*, 438 U.S. at 71, 98 S.Ct. 2620 (quoting *Bell*, 327 U.S. at 684, 66 S.Ct. 773); *see also 16 Am Jur.2d Constitutional Law* § 109 (1998) ("There is a strong presumption that constitutional claims are judicially reviewable in some forum."). Since *Duke Power*, the Supreme Court has continued to allow constitutional

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[7] Here, just as in *Duke Power*, "[i]mplicit in the complaint is also the assumption that there exists a cause of action directly under the Constitution to vindicate [the claimants'] federal rights through a suit against the [federal officer and] the executive agency charged with enforcement and administration of the allegedly unconstitutional statute." 438 U.S. at 69, 98 S.Ct. 2620. While it is unclear whether this assumption is correct, this issue need not be addressed and resolved in order for the Court to be satisfied of its jurisdiction.

challenges to federal legislation. *See, e.g., New York v. United States*, 505 U.S. 144, 112 S.Ct. 2408, 120 L.Ed.2d 120 (1992); *South Dakota v. Dole*, 483 U.S. 203, 107 S.Ct. 2793, 97 L.Ed.2d 171 (1987).

These authorities counsel that a sufficient foundation for the exercise of federal question jurisdiction is established in a declaratory judgment action whenever a claimant challenges the constitutionality of the text or the manner of implementation of a federal statute. Here, the State contends that Congress overstepped the boundaries of the Spending Clause and the Tenth Amendment when it statutorily attached certain conditions to the receipt of federal funding. In the judgment of the Court, these allegations are sufficient to create federal question jurisdiction, and, hence, it need not address whether, in fact, a federal cause of action exists.

IV

Although federal questions often fall within the purview of the federal courts, the Constitution requires that each such issue be presented as a part of an actual case or controversy. U.S. Const. art. III, § 2. One component of this general requirement is that a claimant must have standing in order to assert its claims. *See Clinton v. City of New York*, 524 U.S. 417, 429, 118 S.Ct. 2091, 141 L.Ed.2d 393 (1998); *Steel Co.*, 523 U.S. at 92, 118 S.Ct. 1003; *Allen v. Wright*, 468 U.S. 737, 750, 104 S.Ct. 3315, 82 L.Ed.2d 556 (1984).[8]

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[8] "[T]he doctrine ... serves to identify those disputes which are appropriately resolved through the judicial process." *Whitmore v. Arkansas*, 495 U.S. 149, 155, 110 S.Ct. 1717, 109 L.Ed.2d 135 (1990), *cited in Steel Co.*, 523 U.S. at 102, 118 S.Ct. 1003 ("Standing to sue is part of the common understanding of what it takes to make a justiciable case."); *see Steel Co.*, 523 U.S. at 92, 118 S.Ct. 1003 (the Court has "always taken [Article III] to mean cases and controversies of the sort traditionally amenable to and resolved by the judicial process").

As a general matter, it has been observed that "the states have no general standing before the United States Supreme Court to attack laws passed by Congress." 6 Am.Jur.2d *Constitutional Law* § 151 (1998).

Here, the Court has asked the parties to identify the circumstances that would justify a finding of standing. The standing inquiry involves two basic questions about the character of the lawsuit and the litigants. First, the Court must determine whether the litigation more closely resembles a traditional lawsuit rather than a historically legislative or executive activity. *See generally Federal Election Comm'n v. Akins*, 524 U.S. 11, 23, 118 S.Ct. 1777, 141 L.Ed.2d 10 (1998) (generalized grievances are better suited to legislative, not judicial, processes).[9] Second, the Court must also "focus[ ] on whether the plaintiff is the proper party to bring this suit, although that inquiry 'often turns on the nature and source of the claim asserted.' " *Raines v. Byrd*, 521 U.S. 811, 818, 117 S.Ct. 2312, 138 L.Ed.2d 849 (1997) (quoting *Warth v. Seldin*, 422 U.S. 490, 500, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975)); *see Richard H. Fallon, Jr., Daniel J. Meltzer & David L. Shapiro, Hart & Wechsler's The Federal Courts and the Federal System* 136 (4th ed.1996).

To facilitate this examination, the Supreme Court has stated that standing exists when a claimant "allege[s] personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief." *Allen*, 468 U.S. at 751, 104 S.Ct. 3315, *quoted in Department of Commerce v. United States House of*

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[9] In this respect, the standing doctrine preserves a fundamental principle of American government--the separation of powers. *See Steel Co.*, 523 U.S. at 102, 118 S.Ct. 1003 (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 559-60, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992)).

Representatives, 525 U.S. 316, 329, 119 S.Ct. 765, 142 L.Ed.2d 797 (1999). Thus, a claimant must make a showing which addresses the elements of injury, causation, and redressability. Nonetheless, the Court is obliged to interpret these elements in accordance with the basic questions that they were meant to answer in order for the doctrine to fulfill its underlying constitutional purpose.

In response to the prompting by the Court, the Secretary has contended that the Plaintiffs (1) are not the proper parties to bring these claims against her and (2) have submitted a generalized grievance that is ill-suited to the judicial process. Nonetheless and with respect to the State, a review of the current record in this case reveals that the alleged harms (to wit, the pecuniary penalties) are directly traceable to the arguably unconstitutional acts of Congress. *See State of Kansas v. United States*, 24 F.Supp.2d 1192, 1195 (D.Kan.1998). Moreover, the Court is statutorily empowered to grant at least some of the declaratory relief that is sought by the State. *See* 28 U.S.C. § 2201. Hence, the determinative issue of standing is whether the State has alleged a sufficient injury.

A cognizable injury is present when a claimant points to "an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992). In this case, the State's allegations, if accepted as true, reveal that it has incurred, and is continuing to incur, an actual and an imminent infringement of its legal rights under the Tenth Amendment and federal law. First, if Congress' enactment of the legislation at issue has exceeded its constitutional powers, as alleged in the Complaint, then the State's reserved rights under the Tenth Amendment have

already been violated. Such an injury, if any, occurred on the date upon which the statute was enacted. Moreover, the State has identified a claimed financial harm (i.e., the probable loss of millions of dollars in federal funding during the next session of Congress if its arguments do not prevail here) that is sufficiently imminent to sharpen its interest in the litigation. Accordingly, the Court concludes that the State is a proper party to bring these claims.

Nonetheless, as to the State's claim arising under the Due Process Clause of the Fifth Amendment, it is well settled that "[t]he word 'person' in the context of [that] Clause ... cannot, by any reasonable mode of interpretation, be expanded to encompass the States of the Union ...." *South Carolina v. Katzenbach*, 383 U.S. 301, 323, 86 S.Ct. 803, 15 L.Ed.2d 769 (1966). Thus, as it applies to this controversy and as the State admitted during its oral argument, the State cannot invoke the protections of the Fifth Amendment with claims that it has been harmed. Therefore, the Court concludes that (1) the State has failed to set forth an injury under the Fifth Amendment upon which a finding of standing could be based, (2) this Court lacks jurisdiction to hear the claim,[10] and (3) Count VII must be dismissed.

With respect to the remaining claims, the Secretary

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[10] Following its initial review, the Court has been unable to identify any other Plaintiff who would have standing to assert the Due Process claim. The officers of the State, who are representing their respective branches of government, do not appear to be asserting the rights of any "person" who is protected by the Due Process Clause. Neither the State nor its officers have the authority to represent South Carolinian citizens against the United States. *See Commonwealth of Massachusetts v. Mellon*, 262 U.S. 447, 483-84, 43 S.Ct. 597, 67 L.Ed. 1078 (1923). Moreover, any claim by the State's citizens upon the allegations here would ostensibly be shared by a substantial section of South Carolinian society. Such claims amount to the kind of generalized grievance that is better suited to the legislative process.

maintains that this lawsuit is an improper attempt upon which to obtain judicial review of a generalized grievance. She posits that a substantial section of South Carolinian society would feel the economic effects which would result from a reduction in federal funding. Thus, Secretary Shalala submits that the State's interest is not concentrated enough to serve as the basis for adjudication. In support, she looks to *Wyoming v. Oklahoma*, 502 U.S. 437, 112 S.Ct. 789, 117 L.Ed.2d 1 (1992), for the proposition that general economic injuries to a state are too diffuse to create standing for the purpose of this lawsuit.

However, the Secretary has overstated the reach of *Wyoming*. In her favor, she correctly cites the Supreme Court as having recognized that standing has been denied "to States where the claim was that actions taken by United States Government agencies had injured a State's economy and thereby caused a decline in general tax revenues." *Id.* at 448, 112 S.Ct. 789 (citations omitted). At the same time, the Wyoming Court expressly distinguished such claims from actions that "involve[ ] a direct injury in the form of a loss of specific tax revenues--an undisputed fact here." *Id.* at 448, 112 S.Ct. 789. On this basis, the Supreme Court found that standing exists whenever an economic injury to a state is direct and specific. *See id.*

In the present case, the State does not merely assert that the disputed federal actions will have a vague effect upon its economy. Instead, it complains that the United States will deprive it of particular monies and impose specific penalties. As such, the State's grievance is not abstract, but rather it is particularized. Hence, the Court determines that (1) this controversy is fit for adjudication, and (2) the State has standing to litigate the current issues in controversy. Moreover, because the State is competent to

argue each of these pending questions, it is unnecessary at this time to examine in detail whether the remaining Plaintiffs have equal standing to bring these claims.

V

Despite the existence of a federal question and the State's standing to sue, Secretary Shalala contends that the doctrine of sovereign immunity undermines the jurisdiction of the Court to address and resolve the contested issues. In general, "[a]bsent a waiver, sovereign immunity shields the Federal Government and its agencies from suit." *F.D.I.C. v. Meyer*, 510 U.S. 471, 475, 114 S.Ct. 996, 127 L.Ed.2d 308 (1994), *quoted in Department of the Army v. Blue Fox, Inc.*, 525 U.S. 255, 260, 119 S.Ct. 687, 142 L.Ed.2d 718 (1999); *see Block v. North Dakota*, 461 U.S. 273, 280, 103 S.Ct. 1811, 75 L.Ed.2d 840 (1983) (doctrine bars suits by states and individuals). However, this principle does not apply when a claimant alleges that "the statute or order conferring power upon the [federal] officer to take action in the sovereign's name is ... unconstitutional." *Larson v. Domestic & Foreign Commerce Corp.*, 337 U.S. 682, 690, 69 S.Ct. 1457, 93 L.Ed. 1628 (1949). Hence, the federal courts are not prevented from adjudicating claims that the United States or its officers have exceeded constitutional limitations. Here, the State claims that sections 652 through 655 of *Title IV-D* infringe upon its rights under the Spending Clause, as well as the Fifth and Tenth Amendments. It is well settled that these claims are within the jurisdiction of the Court.

As to the State's statutory claims, Congress has expressly waived federal immunity. At least one member of the Supreme Court has observed that "5 U.S.C. § 702 ... waives the immunity of the United States in actions for relief

other than money damages." *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 510, 119 S.Ct. 936, 142 L.Ed.2d 940 (1999) (Souter, J., dissenting). The waiver is not limited to those suits that are brought under the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 701, 704. *Id.* ("This waiver of immunity is not restricted by the requirement of final agency action that applies to suits under the Administrative Procedure Act."). The majority of federal appellate courts that have considered this issue have reached the same conclusion. *See United States v. Vazquez*, 145 F.3d 74 (2d Cir.1998) (§ 702 waives immunity for declaratory and injunctive claims); *A.E. Finley & Assocs. v. United States*, 898 F.2d 1165, 1167 (6th Cir.1990) (general waiver under § 702 applies to all actions for nonmonetary relief under 28 U.S.C. § 1331); *Presbyterian Church (U.S.A.) v. United States*, 870 F.2d 518, 525 (9th Cir.1989) ("On its face, the 1976 amendment is an unqualified waiver of sovereign immunity in actions seeking nonmonetary relief against legal wrongs for which governmental agencies are accountable."); *Jaffee v. United States*, 592 F.2d 712, 718-19 (3d Cir.1979). Here, the State has requested declaratory and injunctive relief in an effort to determine the statutory power of an agency to grant the ultimate relief that it seeks. Such claims are not barred by the doctrine of sovereign immunity. Accordingly, this Court determines that it has jurisdiction to evaluate the issues in this controversy.

VI

Having resolved these important preliminary questions, the Court now turns its attention to the issues that have been raised in the parties' motions. Secretary Shalala initially has submitted a request for dismissal on two grounds. First, she attacks the jurisdiction of the Court by arguing that the State has failed to exhaust its administrative

remedies. She also maintains that the State cannot obtain the injunctive and declaratory relief that it seeks because its claims lack substantive merit. Specifically, she contends that *Title IV-D* (1) is constitutionally permissible and (2) mandates the conditions that the State now challenges in this action. Importantly, Secretary Shalala insists that she does not have any discretion to waive them.

A

Federal Rule of Civil Procedure 12(b)(1) governs motions to dismiss for lack of subject matter jurisdiction. According to the United States Court of Appeals for the Fourth Circuit ("Fourth Circuit"), "[w]hen a defendant challenges subject matter jurisdiction pursuant to Rule 12(b)(1), 'the district court is to regard the pleadings as mere evidence on the issue, and may consider evidence outside the pleadings without converting the proceeding to one for summary judgment.' " *Evans v. B.F. Perkins Co.*, 166 F.3d 642, 647 (4th Cir.1999) (*quoting Richmond, Fredericksburg & Potomac R. Co. v. United States*, 945 F.2d 765, 768 (4th Cir.1991)).[11]

The motion should be granted only "if the material jurisdictional facts are not in dispute and the moving party is entitled to prevail as a matter of law." *Richmond*, 945 F.2d at 768, *quoted in Evans*, 166 F.3d at 647. Throughout its assessment of the motion, the Court is mindful that the plaintiff bears the burden of proving the existence of jurisdiction. *See Evans*, 166 F.3d at 647; *Richmond*, 945

[11] *See Meliezer v. RTC*, 952 F.2d 879, 881 (5th Cir.1992). When presented with the same type of motion, other courts have concluded that "[a]ny factual findings by the district court in resolving a motion to dismiss are [subject to] review[ ] only for clear error." *Jones v. City of Lakeland*, 175 F.3d 410, 413 (6th Cir.1999) (citing *Gafford v. General Elec. Co.*, 997 F.2d 150, 161 (6th Cir.1993)).

F.2d at 768.

B

According to the Secretary, the Court lacks subject matter jurisdiction because the State has failed to exhaust its administrative remedies.[12] (Defs.' Mem. Supp. Mot. Dismiss at 8.) In support, Secretary Shalala argues that there has been no final action by her Department for the Court to review and no exception to the exhaustion doctrine is applicable to the issues herein.[13] In its responsive pleadings, the State asserts, among other things, that the anticipated actions by the Secretary place it on the horns of an untenable dilemma. The State claims that if its remedies are exhausted and it elects to await a pending administrative decision, it may become ineligible to choose an alternative lesser statutory penalty for its non-compliance. As such, the State stands to lose hundreds of millions of dollars in funding to poor families over the course of the coming years. On the other hand, if it accepts the alternative penalty, its poor residents will lose tens of millions of dollars in financial assistance.

Before the Court can consider the Secretary's arguments as to the questions of finality and doctrinal

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[12] The Secretary relies upon *Drew v. United States*, 217 F.3d 193 (4th Cir.2000) (concerning administrative claim filed with Air Force as required by 28 U.S.C. § 2675(a)). However, *Drew* was vacated on September 8, 2000 by the Fourth Circuit, which granted a rehearing *en banc*. A superceding opinion has not been issued.

[13] The law is clear that although the doctrines of exhaustion and finality are related, they are different. *See McCarthy v. Madigan*, 503 U.S. 140, 144, 112 S.Ct. 1081, 117 L.Ed.2d 291 (1992).

exceptions, it must first find an exhaustion requirement. Such a requirement can arise by statute or through an operation of the common law. *See* 2 Kenneth Culp Davis & Richard J. Pierce, Jr., *Administrative Law Treatise* § 15.3, at 316 (3d ed.1994) (citing *McCarthy v. Madigan*, 503 U.S. 140, 112 S.Ct. 1081, 117 L.Ed.2d 291 (1992)). When Congress statutorily commands claimants to pursue administrative remedies before seeking judicial review, the exhaustion requirement is mandatory.[14] *See McCarthy*, 503 U.S. at 144, 112 S.Ct. 1081. For example, a party who seeks relief pursuant to the APA must first submit the claim to the prescribed administrative tribunal. At the same time, "the exhaustion doctrine continues to apply as a matter of judicial discretion in cases not governed by the APA." *Darby v. Cisneros*, 509 U.S. 137, 154, 113 S.Ct. 2539, 125 L.Ed.2d 113 (1993).

The Complaint in this case contains eight counts. The bulk of the State's claims (to wit, Counts I and III through VIII) pertain to the constitutional and legislative legitimacy of the Secretary's administrative procedures. They do not sound in the APA. Indeed, the State has distinguished these counts from those that arise under the APA. (*See* Pls.' Mem. in Resp. to "Supplemental Br. of the United States" at 2-3.) Neither the Complaint nor the parties' briefs on the instant motion set forth any other

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[14] *See also City of Detroit Pension Fund v. Prudential Sec. Inc.*, 91 F.3d 26, 29 (6th Cir.1996) (when Congress "vests in an administrative agency exclusive jurisdiction over any [particular] claims ... failure to exhaust administrative remedies generally bars judicial review") (discussing *Pennsylvania R.R. Co. v. Day*, 360 U.S. 548, 79 S.Ct. 1322, 3 L.Ed.2d 1422 (1959)); *Rosa v. RTC*, 938 F.2d 383, 395 (3d Cir.1991) ("Congress made this statutory exhaustion requirement [under the FIRREA] explicitly jurisdictional."); *Townsend v. United States Dept. of Justice (INS)*, 799 F.2d 179, 181 (5th Cir.1986) ("When exhaustion is statutorily mandated, the requirement is jurisdictional."), *quoted in Meliezer*, 952 F.2d at 882.

statutory authority that might mandate an exhaustion requirement for these claims.[15] Instead, Secretary Shalala has acknowledged that "[a]lthough an opportunity for an evidentiary hearing is routinely provided in State Plan conformity disputes, there is no statutory requirement and the Departmental Appeals Board has held that there is no necessity for an evidentiary hearing whe[re as here,] there are no genuine issues of material fact." (Defs.' Mot. Dismiss at 4 n. 5 (citations omitted).) Accordingly, the question as to whether the State should be required to exhaust the available administrative procedures for these claims falls within the sound discretion of this Court.

In considering whether to impose a discretionary exhaustion requirement, "federal courts must balance the interest of the individual in retaining prompt access to a federal judicial forum against countervailing institutional interests favoring exhaustion." *McCarthy*, 503 U.S. at 146, 112 S.Ct. 1081. Importantly, the Supreme Court has recognized that the "[a]pplication of this balancing principle is 'intensely practical,' because attention is directed to both the nature of the claim presented and the characteristics of the particular administrative procedure provided." *Id.*

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[15] Secretary Shalala has argued that "because Congress has specifically vested the duty of implementing the regulations and laws at issue to [her agency], Congress has spoken clearly in requiring exhaustion of administrative remedies." (Defs.' Mem. Supp. Mot. Dismiss at 11) (citing *Volvo GM Heavy Truck Corp. v. United States Dep't of Labor*, 118 F.3d 205, 211 (4th Cir.1997).) However, if the Court adopted the Secretary's expansive reading of *Volvo GM* and declared that the mere act of granting authority to an executive officer with which to implement a statute constitutes sufficient grounds to render exhaustion mandatory, it would ostensibly contradict much Supreme Court precedent. *Compare, e.g., Darby*, 509 U.S. at 154, 113 S.Ct. 2539 (discussing claims against federal housing agency that are not subject to mandatory exhaustion), *with* 42 U.S.C. §§ 3531 *et seq.* (1993) (granting authority to Secretary of Housing and Urban Development to implement executive policies and legislation).

(quoting *Bowen v. City of New York*, 476 U.S. 467, 484, 106 S.Ct. 2022, 90 L.Ed.2d 462 (1986); citing *Mathews v. Eldridge*, 424 U.S. 319, 331, n. 11, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976)). Nonetheless, it has been observed that "[e]xhaustion is usually required unless considerations of individual justice, efficiency, or wise judicial administration support the need for judicial review in the absence of exhaustion." 2 Davis & Pierce, *supra* § 15.2, at 307; *see Reiter v. Cooper*, 507 U.S. 258, 269, 113 S.Ct. 1213, 122 L.Ed.2d 604 (1993); *McCarthy*, 503 U.S. at 144, 112 S.Ct. 1081 (citing *Myers v. Bethlehem Shipbldg. Corp.*, 303 U.S. 41, 50-51, and n. 9, 58 S.Ct. 459, 82 L.Ed. 638 (1938)); *see generally Sims v. Apfel*, 530 U.S. 103, 120 S.Ct. 2080, 2083, 147 L.Ed.2d 80 (2000) (failure to seek any redress from Social Security Appeals Council precludes judicial review of claim for benefits).

In order to assess the gravity of the federal interest in requiring exhaustion, the Court must initially examine Congress' legislative intent in enacting the statute. *See Darby*, 509 U.S. at 144-45, 113 S.Ct. 2539 ("Whether courts are free to impose an exhaustion requirement as a matter of judicial discretion depends, at least in part, on whether Congress has provided otherwise, for of paramount importance to any exhaustion inquiry is congressional intent.") (quoting *McCarthy*, 503 U.S. at 144, 112 S.Ct. 1081; *Patsy v. Board of Regents of Florida*, 457 U.S. 496, 501, 102 S.Ct. 2557, 73 L.Ed.2d 172 (1982)) (internal quotation and alteration marks omitted); *Nationsbank Corp. v. Herman*, 174 F.3d 424 (4th Cir.1999) ("Where Congress has intended to require administrative exhaustion prior to any judicial challenges to an agency's enforcement of a law or regulation, courts enforce that requirement unless a party provides grounds for waiving it in a particular case."). Then, the Court must consider the facts of the case in light of,

among other things, the requirement's "twin purposes of protecting administrative agency authority and promoting judicial efficiency." *McCarthy*, 503 U.S. at 145, 112 S.Ct. 1081.

Against these federal interests, the Court must also weigh the needs of a plaintiff to have immediate judicial review. The *McCarthy* Court "recognized at least three broad sets of circumstances [that] weigh heavily against requiring administrative exhaustion." 503 U.S. at 146, 112 S.Ct. 1081. First, exhaustion may be inappropriate if it would cause "undue prejudice to [a party's] subsequent assertion of a court action." *Id.* at 146-47, 112 S.Ct. 1081 (discussing prejudice that could result from, among other things, lengthy delay in receipt of final administrative decision or otherwise irreparable harm). "Second, an administrative remedy may be inadequate 'because of some doubt as to whether the agency was empowered to grant effective relief.' " *Id.* at 147, 112 S.Ct. 1081. The Court expressly noted that such limitations on administrative competency may arise when the constitutionality of a statute is challenged. *Id.* at 147-48, 112 S.Ct. 1081. Finally, the inadequacy of an administrative remedy may be apparent when "the administrative body is shown to be biased or has otherwise predetermined the issue before it." *Id.* at 148, 112 S.Ct. 1081 (citing *Gibson v. Berryhill*, 411 U.S. 564, 575 n. 14, 93 S.Ct. 1689, 36 L.Ed.2d 488 (1973); *Houghton v. Shafer*, 392 U.S. 639, 640, 88 S.Ct. 2119, 20 L.Ed.2d 1319 (1968)).

Applying these considerations to the present circumstances, the Court concludes that an administrative exhaustion effort by the Plaintiffs is not required. On one side of the scale, there appear to be three reasons why the federal interest does not weigh strongly in favor of allowing

Secretary Shalala to initially decide the specific onstitutional and statutory issues that are to be presented to the federal judiciary. First, after reviewing the legislative history which surrounds the Child Support Enforcement Act and its amendments, the Court is unable find any indication that it was the intention of Congress for claims, such as those that have been advanced by South Carolina, to be first heard by the Department of Health and Human Services. Second, in permitting judicial review, the Court is not impinging upon the established authority of the agency. Although Secretary Shalala has fashioned a method of reviewing the states' concerns with respect to their compliance with federal law, this process is not authoritatively recognized as being the states' exclusive forum for relief. Third, any general gain in efficiency that might result from the administrative process is offset here by the judicial waste that would follow a dismissal of this case by the Department.

On the other side of the scale, there are a similar number of reasons why the interest of the State and its citizens in having an immediate judicial review is substantial. First, although a dismissal at the administrative level would not result in an unwarranted delay in the judicial process, it would have a prejudicial effect. In a subsequent legal proceeding, the State ostensibly would be operating at a significant disadvantage, in that it would (1) have incurred penalties in the meantime and (2) be ineligible to elect a lesser alternative penalty if its claims were ultimately rejected. Second, the State has challenged the constitutionality of the agency's governing statute, as well as its apparent interpretation of the range of relief that is available upon administrative review. Such questions concern the nature and validity of the administrative structure itself, and not merely the correctness of its application. These issues fall less within the competency of

the administrative agency and more within the purview of the federal courts. Third, the presiding officer, who was assigned by the Secretary to submit proposed findings relating to the State's compliance with the federal statutes at issue, concluded that (1) an automated data processing system is mandatory, (2) Secretary Shalala does not have any discretion to conditionally certify the State's present system or to impose any lesser sanction for the State's failure to have an operable system, and (3) the State is out of compliance with its federally mandated requirements. (Defs.' Mem. Supp. Mot. Dismiss at 5.) Although the ultimate decision is not entirely predetermined by the presiding officer's proposed disposition of this matter, such a preliminary report implies that Secretary Shalala is more likely to reach a conclusion that is adverse to the State. Notably, the circumstances that led to this dispute arose when the Secretary "began the formal process to disapprove the State's *Title IV-D* Plan ...." (*Id.* at 3.) This procedural posture suggests that an administrative decision against the State is somewhat of a foregone conclusion. Each of these factors weighs in favor of permitting this case to proceed without requiring administrative exhaustion. Accordingly, the Court determines that an administrative exhaustion is not required as it pertains to the State's Counts I and III through VIII.

However, a different conclusion is warranted as to the State's second claim, which has been captioned as a request for redress for Secretary Shalala's "Failure to Conform with Procedures." In this count, the State asks the Court to compel the Secretary to heed her Department's official practice and grant the State a full evidentiary hearing as to whether, in light of all the circumstances that surround this case, the statutory requirements should be waived. Having carefully reviewed the Complaint, the Court finds no

basis upon which to distinguish this count from a standard claim under the APA. Thus, the Court concludes that an administrative exhaustion requirement is applicable to the State's second request for relief.

Nevertheless, the question remains as to whether the State's failure to satisfy this requirement should result in a dismissal of its second claim. Both parties have correctly observed that the federal courts allow an exemption from an exhaustion requirement where the claimant can show, among other things, that a resort to administrative review would be futile. (Defs.' Mem. Supp. Mot. Dismiss at 11; Pls.' Mem. Opp'n to Mot. Dismiss at 13.) *See McDonald v. Centra*, 946 F.2d 1059, 1063 (4th Cir.1991). According to the Fourth Circuit, a party's mere assertion that its administrative claims will fail is an insufficient basis upon which to demonstrate the requisite futility "[a]bsent a hard and fast position [by the federal agency or official] that makes an adverse ruling a certainty ...." *Thetford Properties IV Ltd. v. Department of H.U.D.*, 907 F.2d 445 (4th Cir.1990), *quoted in Volvo GM Heavy Truck Corp. v. United States Dep't of Labor*, 118 F.3d 205, 214 (4th Cir.1997).

Here, the Secretary has consistently maintained that, under the federal statutes and regulations, she lacks the statutory authority to hold the kind of hearing that the State seeks. (*See, e.g.*, Defs.' Reply for Mot. Dismiss at 9- 10 (asserting that (1) questions about reasons for the State's noncompliance are irrelevant to evidentiary hearings that Secretary Shalala conducts in her administrative procedures, (2) this hearing would be useless since she cannot grant requested relief unless Court finds that she has the discretion to waive statutory conditions, and (3) she lacks jurisdiction over other necessary parties).) Moreover, her general position (namely, that the State's requests are without merit)

as discussed in reference to the other claims, is sufficient to reassure this Court that a resort by the State to the administrative process would be futile. Accordingly, the Court concludes that jurisdiction is present as to Count II of the Complaint under the circumstances in this case despite the State's failure to exhaust its administrative remedies.

C

According to Shalala, even if jurisdiction is present, she is entitled to a dismissal or an entry of a summary judgment as to the State's claims because they lack substantive merit. Although motions to dismiss for failure to state a tenable claim are governed by Federal Rule of Civil Procedure 12(b)(6), the Rule provides that such applications for dispositive relief are converted to ones for summary judgment where, as here, the Court considers evidence outside the pleadings. In such cases, Federal Rule of Civil Procedure 56 sets forth the applicable standards.

Under Rule 56(c), the Court renders a judgment forthwith only if the pleadings and evidentiary submissions, "if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." The burden is on the moving party to demonstrate the absence of a genuine issue of material fact. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). In assessing the request, the Court examines any pleadings and evidence in the light that is most favorable to the nonmoving party. *See Fed.R.*Civ.P. 56(c); *Eastman Kodak Co. v. Image Tech. Servs., Inc.*, 504 U.S. 451, 456, 112 S.Ct. 2072, 119 L.Ed.2d 265 (1992) (quoting *Anderson*, 477 U.S. at 255, 106 S.Ct. 2505). Nonetheless, the Court is mindful that "[o]ne of the principal purposes of the summary judgment rule is to isolate

and dispose of factually unsupportable claims or defenses ...."*Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986).

Importantly, the Court may deny summary judgment on one claim even while granting partial summary judgment on another claim. *See* Fed.R.Civ.P. 56(d) ("If ... judgment is not rendered ... for all the relief asked ... the court at the hearing on the motion ... shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order [specifying and distinguishing the facts that are and are not controverted]."). Thus, each claim must be analyzed separately under these standards.

D

Secretary Shalala asks the Court to enter a summary judgment against some of the State's constitutional claims. Specifically, she contends that Congress acted well within its authority under the Spending Clause when it enacted the conditions under *Title IV-D*. Thus, it is her position that the State's requests for relief under Article I and the Tenth Amendment must fail. In its response, the State maintains that Congress did not heed the requirements of the Spending Clause because (1) the operation of *Title IV-D* does not enhance the general welfare, (2) the statutory text does not notify the states of the full effect of their acceptance of federal funding, (3) *Title IV-D* is not rationally related to Congress' goal of enhancing child support enforcement, and (4) the federal government has effectively engaged in impermissible coercion in requiring the states to satisfy the conditions of the statute.

The seminal case on the breadth of Congress' authority under the Spending Clause is *South Dakota v. Dole,* 483 U.S. 203, 107 S.Ct. 2793, 97 L.Ed.2d 171 (1987). There, the legislature had approved federal spending provisions for the construction and maintenance of the national highways. However, this legislation required, among other things, the Secretary of Transportation to withhold a portion of the allocated funds from any state that did not prohibit the purchase or public possession of alcohol to anyone who was younger than twenty-one years of age. *See* 23 U.S.C. § 158 (1982 ed., Supp. III). The effect of the law was generally to institute a national minimum drinking age. South Dakota argued that such legislation usurped its constitutional powers under the Twenty-first and Tenth Amendments. *South Dakota*, 483 U.S. at 205- 06, 107 S.Ct. 2793.

The Supreme Court concluded that, regardless of whether Congress could directly regulate the drinking age, the statute was well within the legislature's authority to "provide for the ... general Welfare of the United States." U.S. Const. art. I, § 8, cl. 1, *quoted in* 483 U.S. at 206, 107 S.Ct. 2793. In reaching this conclusion, the *South Dakota* Court observed that, as an incident to the spending power, Congress properly may attach a broad range of conditions to the receipt of federal monies in an effort to further its policy objectives. 483 U.S. at 206, 107 S.Ct. 2793 (citing *Fullilove v. Klutznick*, 448 U.S. 448, 474, 100 S.Ct. 2758, 65 L.Ed.2d 902 (1980); *Lau v. Nichols*, 414 U.S. 563, 569, 94 S.Ct. 786, 39 L.Ed.2d 1 (1974); *Ivanhoe Irrigation Dist. v. McCracken*, 357 U.S. 275, 295, 78 S.Ct. 1174, 2 L.Ed.2d 1313 (1958); *Oklahoma v. Civil Service Comm'n*, 330 U.S. 127, 143-44, 67 S.Ct. 544, 91 L.Ed. 794 (1947); *Chas C. Steward Machine Co. v. Davis*, 301 U.S. 548, 57 S.Ct. 883, 81 L.Ed. 1279 (1937)). Such conditions need not relate closely to the

enumerated powers of Congress. *South Dakota*, 483 U.S. at 207, 107 S.Ct. 2793 (citing *United States v. Butler*, 297 U.S. 1, 66, 56 S.Ct. 312, 80 L.Ed. 477 (1936)).

At the same time, the *South Dakota* Court acknowledged that Congress' spending power is not without limits. *Id.* at 207, 107 S.Ct. 2793. As a preliminary concern, "the exercise of the spending power must be in pursuit of 'the general welfare.' " *Id.* (citing *Helvering v. Davis*, 301 U.S. 619, 640-41, 57 S.Ct. 904, 81 L.Ed. 1307 (1937); *Butler*, 297 U.S. at 65, 56 S.Ct. 312). In the present case, the State argues that the conditions of *Title IV-D* are not consistent with the nation's welfare. Specifically, it contends that, as applied, "the statute penalizes effective child support mechanisms used by the State and takes away TANF funding from needy families." (Pls.' Mem. Opp'n Mot. Dismiss at 23.) As such, the State asserts that the conditions attached to *Title IV-D* are unconstitutional.

When considering whether a spending provision is in the interest of the general welfare, the Court "should defer substantially to the judgment of Congress." *South Dakota*, 483 U.S. at 207, 107 S.Ct. 2793. Here, Congress made a considered judgment that the American public would benefit significantly from the enhanced enforcement of child-support decrees and the diminution of the number of parents who are able to avoid their obligations simply by moving across local or state lines. The mere fact that this Congressional policy may result in some hardship to certain citizens is not sufficient to undermine the assessment by Congress that the measure enhances the "general welfare." The State presents no argument that the *Title IV-D* conditions, as applied nationally, are causing hardships to the general citizenry. Moreover, to the extent that South Carolina's residents experience the effects of the disputed

policy, it is unclear why Congress should be found to be the primary cause of the loss.[16] After all, the State allocates its own tax base in addressing the needs of impoverished families, and it bears the burden of creating centralized child-support data and disbursement units. In the end, the decision lies with the State as to what public benefits to provide, whether to create these centralized systems, and whether to accept or refuse federal funding.[17] *See Nevada v. Skinner*, 884 F.2d 445, 448 (9th Cir.1989). Viewing these factors collectively, the Court is satisfied that Congress acted in the general welfare when it enacted the *Title IV-D* conditions.

As a second limitation on Congress' power to spend federal funds, the *South Dakota* Court observed that statutory or regulatory conditions must be unambiguous so that states can "exercise their choice knowingly, cognizant of the consequences of their participation." *Id.* (quoting *Pennhurst State School and Hosp. v. Halderman*, 451 U.S. 1, 17, 101

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[16] Secretary Shalala has vigorously challenged the factual accuracy of the State's assertion that its present system is sufficiently effective in ensuring that families obtain the support to which they are entitled. (*See* Defs.' Reply Mot. Dismiss at 4-7.) Hence, a question lingers as to why the enforcement of the *Title IV-D* conditions against the State will not ultimately result in a gain for the welfare of its citizens. Nonetheless, the Court need not resolve that particular factual dispute in order to address the merit of the State's legal argument.

[17] This reveals a more fundamental flaw in the State's argument. The State does not contend that Congress has improperly spent federal funds. Rather, it asks the Court to conclude that Congress has improperly refused to spend federal funds and, implicitly, that it has some affirmative obligation to ensure the general welfare. This position is untenable. "Congress has no obligation to use its Spending Clause power to disburse funds to the States, such funds are gifts." *College Sav. Bank v. Florida Prepaid Postsecondary Educ. Expense Bd.*, 527 U.S. 666, 686-87, 119 S.Ct. 2219, 144 L.Ed.2d 605 (1999), *quoted in Litman v. George Mason Univ.*, 186 F.3d 544, 552 (4th Cir.1999).

S.Ct. 1531, 67 L.Ed.2d 694 (1981)). Here, the State protests that it did not have notice of the effect of its acceptance of TANF funds because "[t]he State could not have known that circumstances completely outside of its control would result in the termination of federal funding." (Pls.' Mem. Opp'n Mot. Dismiss at 23.) For this reason, it asks the Court to declare the challenged conditions to be unconstitutional.

Although the Court accepts the State's representation that it did not anticipate all of the reasons that could cause this outcome, this fact does not render the statute ambiguous. The federal laws state clearly and unequivocally that, as a condition of the State's participation in the TANF Program, it must establish and operate the child-support enforcement systems at issue. *See* 42 U.S.C. §§ 654-55 (1998). On the basis of the record in this case, the State has not denied that it was aware that a failure to meet the requirements of *Title IV-D* would cause a withdrawal of funding. Indeed, the State's knowledge of the nature and gravity of the *Title IV-D* conditions is evidenced by its long and close cooperation with the United States in an effort to meet its obligations. The Court observes that, in all likelihood, neither the State nor Congress anticipated that the company which contracted with the State to create these enforcement systems would ostensibly default on its obligations. What is clear, however, is that both of the parties recognized that the State accepted the responsibility for creating these systems as a condition precedent to its receipt of federal monies. Accordingly, the State's contention that the conditions were so ambiguous as to constitute a misuse of the spending power must be rejected.

The State also argues that the *Title IV-D* conditions are not rationally related to Congress' stated purpose in their enactment. *See New York v. United States*, 505 U.S. 144,

167, 112 S.Ct. 2408, 120 L.Ed.2d 120 (1992) ("conditions must ... bear some relationship to the purpose of the federal spending") (citing *South Dakota*, 483 U.S. at 207-08, 107 S.Ct. 2793). "Instead of taking away the State's computer development funding, [the Secretary] is going down the path of taking away all child support enforcement funds and TANF funds." (Pls.' Mem. Opp'n Mot. Dismiss at 23.) However, the State has presented an incomplete account of the intent of Congress, and its contention does not withstand review.

Although the specific rationale behind *Title IV-D* concerns the enforcement of child-support obligations, see 42 U.S.C. § 651 (1999), the challenged conditions were enacted as part of Congress overriding project to streamline federal public assistance programs. As a small part of that project, the legislature sought, among other things, to establish a mechanism whereby impoverished families would be able to collect any overdue child-support payments. Thus, the specific conditions attached in *Title IV-D* were also aimed to achieve the broader goals of the more sweeping reforms; namely, to "provide assistance to needy families so that children may be cared for in their own homes [and] end the dependence of needy parents on government benefits ...." 42 U.S.C. § 601(a) (Supp. II 1996).

In the area of child support, these goals had long been thwarted by localized enforcement systems that were unable to quickly and effectively track delinquent parents who crossed county and state lines. Congress took action to remedy this ill. *See generally* 132 Cong. Rec. S5303-04 (1986) (statement of Sen. Bradley). In this context, the Court cannot say that Congress acted irrationally when, in its efforts to reduce the incidence of poverty among children and families, it conditioned a state's receipt of TANF funds

upon its commitment to create the centralized data and distribution systems at issue. Thus, the contention that the conditions at issue are not rationally related to legitimate governmental objectives must be rejected. Notably, this conclusion compels the entry of a summary judgment against the State as to its Count III. *See supra* note 5.

The State's most compelling argument concerns the coercive effect of the *Title IV-D* legislation. In South Dakota, the Supreme Court recognized that in extreme cases the Tenth Amendment might limit Congress' use of the spending power. In considering whether the highway funding provision infringed upon South Dakota's rights under the Tenth Amendment, the South Dakota Court noted that "in some circumstances the financial inducement offered by Congress might be so coercive as to pass the point at which 'pressure turns to compulsion.' " 483 U.S. at 210-11, 107 S.Ct. 2793 (quoting *Chas C. Steward Machine Co.*, 301 U.S. at 590, 57 S.Ct. 883). If the state were so compelled to take certain actions, Congress would overstep its constitutional bounds. *See New York*, 505 U.S. at 166, 112 S.Ct. 2408. Nonetheless, the South Dakota Court concluded that, on the facts of that case, such coercion was not present since the state stood to lose only five percent of its federal highway funding if it failed to enact a minimum drinking age of twenty-one. *See* 483 U.S. at 211-12, 107 S.Ct. 2793. In reaching this conclusion, the Supreme Court declared that the mere effectiveness of a condition in inducing compliance is not evidence of its coerciveness. *See id.* at 211, 107 S.Ct. 2793.

In this case, Congress instituted the *Title IV-D* conditions as a part of its efforts to substantially overhaul federal public assistance programs. It was the Congress' view that fewer federal tax dollars would be needed for such

programs if effective mechanisms were in place to better ensure that parents met their legal child-support obligations. The State argues that, in the midst of such efforts, the federal government has improperly coerced it to disrupt its own family court system under the threat of losing federal funding. However, it is undisputed that the State remains, at this time, free to elect the alternative penalty as to either or both the data and disbursement systems. Indeed, the State has already requested, and been approved to accept, the alternative penalty with respect to its disbursement system. (*See* Pls.' Mem. Opp'n Mot. Dismiss Ex. K at 3.) By the State's own admission, this penalty presently amounts to less than one (1) percent of its overall TANF funding, and the loss will increase to a maximum of less than six (6) percent of the total funding by fiscal year 2004. Similarly, if the State cannot timely create a centralized data system and elects the alternative penalty under § 655(a), it stands to lose only approximately five (5) percent of its overall TANF funding each year that it fails to comply. (*See id.* at 2.) However, these penalties are not cumulative. (*See id.* at 3) Accordingly, even if the State elects to pay the alternative penalties for its inabilities to complete the data and disbursement systems, it faces a maximum loss of less than six (6) percent of its total TANF funds. The *South Dakota* Court found such a proportion of loss to be non-coercive, and this Court is bound to agree. Accordingly, the Court is preliminarily persuaded that the *Title IV-D* conditions are not so overbearing as to create an unconstitutional compulsion.

There looms in the background, however, the possibility that the State might cease to make good faith efforts to complete its systems or refuse to elect the alternative penalty. In such case, it stands to lose the entirety of its federal TANF funding. The Fourth Circuit has suggested, in a plurality opinion, that such a far reaching

penalty might be so coercive as to violate the Tenth Amendment. *See Commonwealth of Virginia Dep't of Educ. v. Riley*, 106 F.3d 559 (4th Cir.1997); *see generally College Sav. Bank v. Florida Prepaid Postsecondary Educ. Expense Bd.*, 527 U.S. 666, 697, 119 S.Ct. 2219, 144 L.Ed.2d 605 (1999) (Breyer, J. dissenting) (discussing Congress' use of sanctions and its spending power in relation to states' sovereign immunity under Eleventh Amendment; "Given the amount of money at stake, it may be harder, not easier for a State to refuse highway funds than to refrain from entering the investment services business."). Hence, the Court will consider the State's request in light of *Riley*. However, at the outset, it is important to note that five judges of the eleven-judge majority in *Riley* specifically declined to concur in the section that contains the Tenth Amendment analysis. An additional two judges dissented from the opinion. Thus, it is unclear what precedential force, if any, that the plurality opinion should have on this particular issue.

In *Riley*, the Secretary of Education had "withheld from [Virginia] 100% of an annual special education grant of $60 million because of [Virginia's] failure to provide private educational services to less than one-tenth of one percent (126) of the 128,000 handicapped students for whom the special education funds were earmarked." *Id.* at 569. According to the record, the loss resulted from the state's decision not to "abandon[ ] one of its most effective tools for maintaining [classroom] order and discipline"--to wit, punishment by suspension. *Id.* (citing *Goss v. Lopez*, 419 U.S. 565, 580, 95 S.Ct. 729, 42 L.Ed.2d 725 (1975)). In finding the action to be coercive, the court stated that the Tenth Amendment is emphatically implicated when the federal government "withholds the entirety of a substantial federal grant on the ground that the States refuse to fulfill their federal obligation in some insubstantial respect rather

than submit to the policy dictates of Washington in a matter peculiarly within their powers as sovereign states." *Id.* at 570, 95 S.Ct. 729. The State seizes upon this language to argue that the *Title IV-D* conditions are unconstitutional.

However, substantial distinctions separate *Riley* from this case. First, this case does not present the same indicia of an imbalance of power. Part of the evidence of coercion in *Riley* was that the federal government could inflict deeply wounding penalties for a minor, perhaps negligible, infraction by the state. Virginia had arguably fulfilled 99.9% of its legal obligations, but the federal government threatened to rescind 100% of its monies. Such a disproportionate relationship between the parties often, although not always, raises legitimate questions of unconscionability,[18] and the Constitution structurally prohibits such imbalanced federal-state relations. By contrast here, the alleged breach by the State is clearly material and substantial. It is undisputed that the State has failed to come within a fair range of completing its centralized data and disbursement systems. In fact, the State asserts that its current measures are so incomplete that it would require three to five years, (Pls.' Mem. Opp'n Mot. Dismiss Ex. B ¶ 6), and more than $100 million in order to come into compliance. Moreover, Congress has been working with the states for twenty-five years on this issue.

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[18] Courts often speak of federal-state relations in contractual terms, *see Butler*, 297 U.S. at 73, 56 S.Ct. 312 ("There is a difference between a statute stating the conditions upon which moneys shall be expended and one effective only upon assumption of a contractual obligation to submit to a regulation which otherwise could not be enforced."); *Virginia Dep't Educ. v. Riley ("Riley I")*, 23 F.3d 80, 87 (1994) ("The result [of the federal-state spending relationship] is akin to a contract between the federal government and each participating state."), and such phrases are illustrative here.

Since 1996, it has unambiguously maintained that an essential component of the federal-state relationship, as it pertains to the provision of public assistance, is the creation of an efficient interstate child-support tracking and disbursement system.

Although the Court recognizes that a third party could, arguably, be responsible for the default, this fact is irrelevant as to whether the federal law is coercive as against the states. There is nothing new in holding that a party to a contract is liable for its failure to substantially perform its obligations thereunder even though a subcontractor actually caused the default. The Secretary is not forcing the State to toe an unreasonably strict proverbial line. Rather, she is recognizing the State's non-compliance in a program that bears a clear relationship to the important goal of making sure that needy children and families receive the monies upon which they depend. Because the alleged breach by the State is material and substantial, Secretary Shalala's enforcement of the statute does not have the same aura of unconscionability that was arguably present in *Riley*.

Additionally, this case does not tread to the same extent on the State's exclusive policy-making authority. The provisions in *Riley* concerned educational discipline, which has long been recognized as falling within the province of the states. *See* 106 F.3d at 571. By contrast here, the *Title IV-D* conditions pertain to the funding of public assistance and the policing of the interstate travel and commercial activities of delinquent parents. Even though the federal government looks to the states for significant cooperation in these matters, these are domains that are comfortably within the power and expertise of the federal government. Indeed, the fact that the State is not in a superior position to provide effective child-support enforcement mechanisms is

evidenced by the class-action lawsuit that is pending against it for its alleged failure to adequately collect support monies that are due. (*See* Defs.' Reply Mot. Dismiss Ex. C.) Based upon these considerations, the Court concludes that this case does not present nearly the degree of pressure that existed in *Riley*, and thus no coercion can be found.

For each of the reasons set forth above, the *Title IV-D* provisions withstand scrutiny and are constitutionally valid under the Spending Clause and the Tenth Amendment. Accordingly, since (1) there is no genuine issue of a material fact in relation to these constitutional questions and (2) the Secretary is legally entitled to the relief that she seeks, the Court will enter a summary judgment as to the State's claims under the Spending Clause and the Tenth Amendment; namely Counts V and VI.

Moreover, although the State alleges that the Secretary has breached her duty of good faith in her performance of some federal-state contract, it is undisputed that no traditional contractual relationship exists between the parties. Rather, since courts use the terminology of contract law to describe Tenth Amendment jurisprudence and federal-state relations, the State has pled a claim in the same vein. Here, the State's breach of contract claim is essentially a Tenth Amendment claim that appears to have been stated in other terms. In analyzing the State's cause as it invokes the Tenth Amendment, the Court has concluded that the federal government has not acted improperly in its bargaining relationship with the State. Hence, the State's breach of contract claim must also fail, and the Court will enter a summary judgment on Count IV as well.

E

The final issue to be resolved in connection with the currently pending motion to dismiss is whether the Department of Health and Human Services has the discretion to amend the penalty structure of *Title IV-D* in order to accommodate a state that, for reasons beyond its control, cannot timely comply with the statute. According to the Secretary's interpretation of the statute, the conditions at issue (to wit, sections 654(16), 654a and 655 of Title 42) do not afford her any discretion to grant the equitable reprieve that the State seeks. In its opposition papers, the State maintains that (1) the Secretary has the inherent authority to exercise her discretion on a case-by- case basis to achieve equitable objectives, (2) the federal mandate has not been violated because it has attempted to satisfy its statutory obligations in good faith, and (3) a wide variety of options are open to the Secretary since Congress has remained silent on this issue.

Before deciding the issue, the Court pauses to note that the State has already elected to incur the alternative penalty for its inability to provide a centralized payment disbursement system. By its own admission, the State has waived any claim to have further administrative review in connection with its distribution program.[19] Thus, the State's remaining statutory claims relate only to the conditions set forth in 42 U.S.C. §§ 654(16),(24) and 654a (2000), which require each participating state to "have in operation a single statewide automated data processing and retrieval system" as well as the penalty provisions of § 655. Hence, the Court will consider the Secretary's exercise of discretion as it

[19] The State's acceptance of this penalty did not waive its broader constitutional challenges to the statute. However, the Court reviewed and rejected those arguments in Section IV(D) of this Order.

pertains to these sections.

Where, as here, a case calls into question the merits of the Department's interpretation of its governing statute, federal courts look to *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984), for guidance. There, the Supreme Court set forth a straightforward analysis for such investigations:

> When a court reviews an agency's construction of the statute which it administers, it is confronted with two questions. First, always, is the question whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress.[20] If, however, the court determines Congress has not directly addressed the precise question at issue, the court does not simply impose its own construction on the statute, as would be necessary in the absence of an administrative interpretation. Rather, if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute.

Id. at 842-43, 104 S.Ct. 2778.

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[20] (Original footnote 9) (citations omitted). The judiciary is the final authority on issues of statutory construction and must reject administrative constructions which are contrary to clear congressional intent. If a court, employing traditional tools of statutory construction, determines that Congress had expressed its intention on a precise question at issue, this declared congressional intention is the law and must be given effect.

In the present case, the Court concludes that Congress has spoken on the issue. *See Edelman v. Lynchburg College*, 228 F.3d 503, 507-08 (4th Cir.2000) (where the intent of Congress is readily discernible, "we need not proceed further"); *see also Walton v. Hammons*, 192 F.3d 590, 601 (6th Cir.1999) (no further review necessary where "the 'traditional tools of statutory construction' have allowed us to derive a clear meaning to the statute") (citing *INS v. Cardoza-Fonseca*, 480 U.S. 421, 446, 107 S.Ct. 1207, 94 L.Ed.2d 434 (1987)); *Director, Office of Workers' Comp. Programs, United States Dept. of Labor v. Sun Ship, Inc.*, 150 F.3d 288, 291 (3d Cir.1998) (additional inquiry is warranted "only when the statute does not directly speak to the issue and congressional intent cannot be gleaned from the text of the statute, or its legislative history"); *Wagner Seed Co. v. Bush*, 946 F.2d 918, 920 (D.C.Cir.1991) ("The controlling principle of Chevron is that when the statute, viewed in light of its legislative history and the traditional tools of statutory construction, is ambiguous, the administering agency is entitled to make 'a reasonable policy choice.' "). Through 42 U.S.C. § 654(24), Congress mandated that a participating state, such as South Carolina,

> must ... provide that [it] *will have in effect an automated data processing and information retrieval system*--(A) by October 1, 1997, which meets all requirements [that] were enacted on or before October 13, 1988; and (B) by October 1, 2000, which meets all requirements [that were] enacted on or before August 22, 1996 ....

(Emphasis added.) This mandate was incident to a lengthy relationship between the federal and state governments on the matters at issue. Indeed, Congress amended the

provision as a part of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 so as to grant the states additional time in which to come into compliance with the requirements of *Title IV-D*.[21] Nonetheless, the parties here agree that the State has not yet complied with the statute's conditions.[22]

In such cases, the statute is clear as to the course of action that the Secretary must take.

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[21] Prior to the amendments, § 654(24) required the State's plan for compliance to provide that if the State, as of October 13, 1988, does not have in effect an automated data processing and information retrieval system meeting all of the requirements of paragraph (16), the State--

(A) will submit to the Secretary by October 1, 1991, for review and approval by the Secretary within 9 months after submittal an advance automated data processing planning document of the type referred to in such paragraph; and

(B) *will have in effect by October 1, 1995, an operational automated data processing and information retrieval system*, meeting all the requirements of that paragraph, which has been approved by the Secretary.

42 U.S.C. § 654(24) (1995) (emphasis added).

[22] Parenthetically, § 654(24) concerns the same "statewide automated data processing and information retrieval system" that is discussed in § 654(16) and described in detail in § 654a. As part of the Secretary's duties, which are prescribed in § 652, she must disapprove of a state's plan under § 654(16) "unless [s]he finds that such document, when implemented, will generally carry out the objectives of the [processing system] and [the] document" sets forth certain requisite details. 42 U.S.C. § 652(d)(1). Although the Secretary may, in limited circumstances, conditionally approve of a system that substantially complies with all of the statute's requirements, see 42 U.S.C. § 652(d)(3), the exception does not ostensibly apply here since the State has admitted that (1) its defaults are substantial and (2) it does not seek conditional approval. During the administrative proceeding, the State declared that it "does not take the position that it is entitled to conditional approval, but only that [the Administration for Children and Families] has the inherent authority to provide for some sanction less than state plan disapproval." (Defs.' Mem. Supp. Mot. Dismiss Ex. I at 2.)

When

> the State has made and is *continuing to make a good faith effort* to so comply [and] the State has submitted to the Secretary a corrective compliance plan that describes how, by when, and at what cost the State will achieve such compliance, which has been approved by the Secretary, ... the Secretary shall not disapprove the State plan ... and *the Secretary shall reduce the amount otherwise payable to the State* [by the designated alternative penalty].

42 U.S.C. § 655(a)(4)(A),(B). Hence, when a state--in the midst of its good faith efforts--fails to submit a compliant plan and to have in effect a statewide data processing system, Congress has decreed that the state's refuge from a total loss of funding lay in its ability to elect the alternative penalty. By the text of the statute, the legislature has prescribed that the Secretary shall enforce this penalty.

Here, it appears to be uncontroversial that the State's data system, in its present form, is not sufficiently compliant with *Title IV-D* and thus warrants disapproval unless the alternative penalty is elected. In the meantime, the State seeks a declaration that, regardless of these circumstances, the Secretary can further reduce or waive the alternative penalty since a third- party has caused the default and the State has tried in good faith to comply with the statute. Such a holding would contradict the terms of the statute. A facial reading of *Title IV-D* reveals that Congress intended for good-faith participants to be largely relieved from the financial consequences of their short-comings. However, Congress specified that its participants would not be free from all losses and provided certain penalties to effectuate

this intent in light of its other policy judgments.

Moreover, even if this Court were uncertain as to whether Congress had left some room for the Department to interpret the relevant portions of sections 652 through 655, such an interpretation would be entitled to deference under the second prong of the Chevron analysis. Here, the Department has indicated that it reads its governing statute in the same manner that the Court has set forth above. The Court finds that such a reading is a permissible construction of the statute, and thus it merits deference. *Chevron*, 467 U.S. at 842-43, 104 S.Ct. 2778. Hence, in viewing this case in light of the principles that were set forth in *Chevron*, 467 U.S. 837, 104 S.Ct. 2778, the Court concludes (1) there is no genuine issue of a material fact and (2) the Secretary is entitled to the entry of a summary judgment as a matter of law on this issue.

The State has cited *Alabama Power Co. v. Costle*, 636 F.2d 323, 357 (D.C.Cir.1979), for the proposition that each federal agency has the inherent authority to exempt a particular party from a statutory requirement when equitable considerations are compelling. However, this is an overstatement of the decision by the *Alabama Power* court, which opined that an agency (1) may fill the gaps left within the framework of a statute and (2) can create equitable, case-specific exemptions to the general rules that it makes in the course of its gap-filling activity. In rendering its decision, the Court of Appeals for the District of Columbia Circuit recognized that an agency lacks the authority to take actions that are contrary to the intentions that Congress has expressed in the statute. *See id.* at 357-58 ("Congress may, of course, restrain the agency by mandating standards from which no variance is permitted."); *Id.* at 358 ("Courts may not manufacture for an agency a revisory power inconsistent

with the clear intent of the relevant statute.") (quoting *Natural Resources Defense Council v. Costle*, 568 F.2d 1369, 1377 (D.C.Cir.1977)). Here, the Court has concluded that the relevant portions of *Title IV-D* reveal the intent of Congress to require the Secretary to enforce the alternative penalty provisions, and the mandatory language of the statute-- in light of the policies behind it--precludes the employment of discretion by the Secretary that the State seeks to invoke. As such, the conclusions in Alabama Power are of no avail to the State.

Even if the statute does mandate compliance, the State argues that, in light of *Quarles v. St. Clair*, 711 F.2d 691, 709 (5th Cir.1983), a state's good faith efforts to fulfill the conditions of *Title IV-D* render it sufficiently compliant to permit relief from penalization. However, the holding by the Quarles court rested upon a matter of statutory construction that does not apply here. In *Quarles*, the parties disputed the import of § 654(7), which required each participating state in the *Title IV-D* program to "provide for entering into cooperative arrangements with appropriate courts and law enforcement officials ... to assist the agency administering the plan ...." 42 U.S.C. § 654(7) (1983). Prior to the commencement of this litigation, Mississippi had not entered into any such arrangements, and the parties argued over whether the state had thereby breached its obligations under the statute. To answer the question, the Court of Appeals for the Fifth Circuit, in looking to the statutory text, concluded that the consummation of an actual agreement was not required. In reaching its decision, the court observed that the words "provide for" do not reveal a legislative intent to require particular results. *Quarles*, 711 F.2d at 710 ("There still remains the issue of whether it must make them. The legislative history of this provision does not show a clear indication of congressional intent."). Indeed,

the *Quarles* court noted that Congress could not reasonably mandate such results because "[s]tate courts are independent governmental bodies. They cannot be compelled by the state to enter into cooperative agreements if they decline to do so." *Id.* at 712. As such, the most reasonable construction of the statute was that states must act in good faith to facilitate the entry of such agreements, but the actual accomplishment of results could not be required.

In this case, it appears that Congress specifically acted to require all of the participating states to achieve certain specified results. In its legislation, Congress expressed a desire that the State, as well as all other participants, must not only "provide for" but also "have in place" a compliant automated data processing system by an identified date. Moreover, there is no impediment to the enforcement of the requirement because the burden of its satisfaction rests solely upon the State. When viewed in this light, a showing of good faith would appear to be irrelevant here since it bears no relationship to the achievement of the results that Congress has mandated. In fact, by specifically attaching a determination of good faith to the alternative penalty provisions in § 655, Congress forestalled the possibility that such a showing might render the State sufficiently compliant with the law as to avoid these penalties. Accordingly, the State's arguments must be rejected, and the Secretary is entitled to the relief that she seeks. A summary judgment shall enter as to Count I. In addition, the parties ostensibly agree that Count II (which is a request by the State for a declaration that an evidentiary hearing should be held on the issue of its good faith) must fail if the Court determines, as it has done here, that the Secretary lacks any discretion under the statute to impose a lesser sanction upon the State than the alternative penalty that Congress has provided. For this reason, the Court shall

also enter a summary judgment as to Count II.

VII

In summary, the Secretary is entitled to the entry of a summary judgment as to all of the claims that have been presented here. The Court lacks jurisdiction to hear the State's contentions with respect to the Due Process Clause of the Fifth Amendment (Count VII) because there is an absence of standing to bring the claim. As to the remaining allegations, the Court is satisfied that there is no genuine issue as to any material fact. The Secretary is entitled to a judgment as a matter of law on the Plaintiffs' counts arising out of the Spending Clause (Count V) and the Tenth Amendment (Count VI), because Congress acted within its constitutional authority. For the same reason, a judgment shall enter against the State's action for breach of contract (Count IV), which is actually a restatement of its cause of action under the Tenth Amendment. As an incident to its decision, the Court has found that the *Title IV-D* conditions are rationally related to Congress' legitimate governmental objectives, and thus Count III ("Declaratory Judgment--Rational Relationship") must be rejected. Moreover, since the Court has concluded that, as a matter of law, the Secretary lacks discretion under *Title IV-D* to afford the state the relief that it seeks, Counts I and II warrant the entry of an adverse summary judgment. Importantly, Count VIII, which is a prayer for injunctive relief, also must be dismissed because each of the State's substantive claims have been adversely adjudicated.

VIII

As a final matter, the Court acknowledges that the Plaintiffs have filed a motion for the entry of a preliminary injunction, which would temporarily prevent the Secretary

from applying the alternative penalty that has been elected in reference to the State's disbursement system. Since this order enters a summary judgment against the Plaintiffs on all claims, the State's motion is denied for reasons of mootness.

IX

Until a time period of thirty (30) days has elapsed from the date upon which this Order is signed, the conclusions set forth herein shall not become binding upon the parties.

IT IS SO ORDERED.

DATED: _____
Beaufort, South Carolina

_____
JULIAN ABELE COOK, JR.
United States District Judge

U.S. CONST Art. I § 8 Cl.1

Section 8, Clause 1. Powers of Congress; Levy of Taxes for Common Defense and General Welfare; Uniformity of Taxation

The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

U.S.C. Const. Amend. X

UNITED STATES CODE ANNOTATED
CONSTITUTION OF THE UNITED STATES
AMENDMENT X--RESERVED POWERS TO STATES
Amendment X. Reserved Powers to States

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

42 U.S.C. § 602

§ 602. Eligible States; State plan

(a) In general

As used in this part, the term "eligible State" means, with respect to a fiscal year, a State that, during the 27-month period ending with the close of the 1st quarter of the fiscal year, has submitted to the Secretary a plan that the Secretary has found includes the following:

(1) Outline of family assistance program

(A) General provisions

A written document that outlines how the State intends to do the following:

(i) Conduct a program, designed to serve all political subdivisions in the State (not necessarily in a uniform manner), that provides assistance to needy families with (or expecting) children and provides parents with job preparation, work, and support services to enable them to leave the program and become self-sufficient.

(ii) Require a parent or caretaker receiving assistance under the program to engage in work (as defined by the State) once the State determines the parent or caretaker is ready to engage in work, or once the parent or caretaker has received assistance under the program for 24 months (whether or not consecutive), whichever is earlier, consistent with section 607(e)(2) of this title.

(iii) Ensure that parents and caretakers receiving assistance under the program engage in work activities in accordance with section 607 of this title.

(iv) Take such reasonable steps as the State deems necessary to restrict the use and disclosure of information about individuals and families receiving assistance under the program attributable to funds provided by the Federal Government.

(v) Establish goals and take action to prevent and reduce the incidence of out- of-wedlock pregnancies, with special emphasis on teenage pregnancies, and establish numerical goals for reducing the illegitimacy ratio of the State (as defined in section 603(a)(2)(C)(iii) of this title) for calendar years 1996 through 2005.

(vi) Conduct a program, designed to reach State and local law enforcement officials, the education system, and relevant counseling services, that provides education and training on the problem of statutory rape so that teenage pregnancy prevention programs may be expanded in scope to include men.

(B) Special provisions

(i) The document shall indicate whether the State intends to treat families moving into the State from another State differently than other families under the program, and if so, how the State intends to treat such families under the program.

(ii) The document shall indicate whether the State intends to provide assistance under the program to individuals who are not citizens of the United States, and if so, shall include an overview of such assistance.

(iii) The document shall set forth objective criteria for the delivery of benefits and the determination of eligibility and for fair and equitable treatment, including an explanation of how the State will provide opportunities for recipients who

have been adversely affected to be heard in a State administrative or appeal process.

(iv) Not later than 1 year after August 22, 1996, unless the chief executive officer of the State opts out of this provision by notifying the Secretary, a State shall, consistent with the exception provided in section 607(e)(2) of this title, require a parent or caretaker receiving assistance under the program who, after receiving such assistance for 2 months is not exempt from work requirements and is not engaged in work, as determined under section 607(c) of this title, to participate in community service employment, with minimum hours per week and tasks to be determined by the State.

(2) Certification that the State will operate a child support enforcement program

A certification by the chief executive officer of the State that, during the fiscal year, the State will operate a child support enforcement program under the State plan approved under part D of this subchapter.

(3) Certification that the State will operate a foster care and adoption assistance program

A certification by the chief executive officer of the State that, during the fiscal year, the State will operate a foster care and adoption assistance program under the State plan approved under part E of this subchapter, and that the State will take such actions as are necessary to ensure that children receiving assistance under such part are eligible for medical assistance under the State plan under subchapter XIX of this chapter.

(4) Certification of the administration of the program

A certification by the chief executive officer of the State specifying which State agency or agencies will administer and supervise the program referred to in paragraph (1) for

the fiscal year, which shall include assurances that local governments and private sector organizations--

(A) have been consulted regarding the plan and design of welfare services in the State so that services are provided in a manner appropriate to local populations; and

(B) have had at least 45 days to submit comments on the plan and the design of such services.

(5) Certification that the State will provide Indians with equitable access to assistance

A certification by the chief executive officer of the State that, during the fiscal year, the State will provide each member of an Indian tribe, who is domiciled in the State and is not eligible for assistance under a tribal family assistance plan approved under section 612 of this title, with equitable access to assistance under the State program funded under this part attributable to funds provided by the Federal Government.

(6) Certification of standards and procedures to ensure against program fraud and abuse

A certification by the chief executive officer of the State that the State has established and is enforcing standards and procedures to ensure against program fraud and abuse, including standards and procedures concerning nepotism, conflicts of interest among individuals responsible for the administration and supervision of the State program, kickbacks, and the use of political patronage.

(7) Optional certification of standards and procedures to ensure that the State will screen for and identify domestic violence

(A) In general

At the option of the State, a certification by the chief executive officer of the State that the State has established and is enforcing standards and procedures to--

(i) screen and identify individuals receiving assistance under this part with a history of domestic violence while maintaining the confidentiality of such individuals;

(ii) refer such individuals to counseling and supportive services; and

(iii) waive, pursuant to a determination of good cause, other program requirements such as time limits (for so long as necessary) for individuals receiving assistance, residency requirements, child support cooperation requirements, and family cap provisions, in cases where compliance with such requirements would make it more difficult for individuals receiving assistance under this part to escape domestic violence or unfairly penalize such individuals who are or have been victimized by such violence, or individuals who are at risk of further domestic violence.

(B) Domestic violence defined

For purposes of this paragraph, the term "domestic violence" has the same meaning as the term "battered or subjected to extreme cruelty", as defined in section 608(a)(7)(C)(iii) of this title.

(b) Plan amendments

Within 30 days after a State amends a plan submitted pursuant to subsection (a) of this section, the State shall notify the Secretary of the amendment.

(c) Public availability of State plan summary

The State shall make available to the public a summary of any plan or plan amendment submitted by the State under this section.

42 U.S.C. § 654

§ 654. State plan for child and spousal support

A State plan for child and spousal support must--

***

(24) provide that the State will have in effect an automated data processing and information retrieval system--

(A) by October 1, 1997, which meets all requirements of this part which were enacted on or before October 13, 1988; and

(B) by October 1, 2000, which meets all requirements of this part enacted on or before August 22, 1996, except that such deadline shall be extended by 1 day for each day (if any) by which the Secretary fails to meet the deadline imposed by section 344(a)(3) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996;

***

(27) provide that, on and after October 1, 1998, the State agency will--

(A) operate a State disbursement unit in accordance with section 654b of this title; and

(B) have sufficient State staff (consisting of State employees) and (at State option) contractors reporting directly to the State agency to--

(i) monitor and enforce support collections through the unit in cases being enforced by the State pursuant to section 654(4) of this title (including carrying out the automated data processing responsibilities described in section 654A(g) of this title); and

(ii) take the actions described in section 666(c)(1) of this title in appropriate cases;

***

42 U.S.C. § 654a

§ 654a. Automated data processing

(a) In general

In order for a State to meet the requirements of this section, the State agency administering the State program under this part shall have in operation a single statewide automated data processing and information retrieval system which has the capability to perform the tasks specified in this section with the frequency and in the manner required by or under this part.

(b) Program management

The automated system required by this section shall perform such functions as the Secretary may specify relating to management of the State program under this part, including--

(1) controlling and accounting for use of Federal, State, and local funds in carrying out the program; and

(2) maintaining the data necessary to meet Federal reporting requirements under this part on a timely basis.

(c) Calculation of performance indicators

In order to enable the Secretary to determine the incentive payments and penalty adjustments required by sections 652(g) and 658 of this title, the State agency shall--

(1) Use the automated system--

(A) to maintain the requisite data on State performance with respect to paternity establishment and child support enforcement in the State; and

(B) to calculate the paternity establishment percentage for the State for each fiscal year; and

(2) have in place systems controls to ensure the completeness and reliability of, and ready access to, the data described in paragraph (1)(A), and the accuracy of the calculations described in paragraph (1)(B).

(d) Information integrity and security

The State agency shall have in effect safeguards on the integrity, accuracy, and completeness of, access to, and use of data in the automated system required by this section, which shall include the following (in addition to such other safeguards as the Secretary may specify in regulations):

(1) Policies restricting access

Written policies concerning access to data by State agency personnel, and sharing of data with other persons, which--

(A) permit access to and use of data only to the extent necessary to carry out the State program under this part; and

(B) specify the data which may be used for particular program purposes, and the personnel permitted access to such data.

(2) Systems controls

Systems controls (such as passwords or blocking of fields) to ensure strict adherence to the policies described in paragraph (1).

(3) Monitoring of access

Routine monitoring of access to and use of the automated system, through methods such as audit trails and feedback mechanisms, to guard against and promptly identify unauthorized access or use.

(4) Training and information

Procedures to ensure that all personnel (including State and local agency staff and contractors) who may have access to or be required to use confidential program data are informed of applicable requirements and penalties (including those in section 6103 of the Internal Revenue Code of 1986), and are adequately trained in security procedures.

(5) Penalties

Administrative penalties (up to and including dismissal from employment) for unauthorized access to, or disclosure or use of, confidential data.

(e) State case registry

(1) Contents

The automated system required by this section shall include a registry (which shall be known as the "State case registry") that contains records with respect to--

(A) each case in which services are being provided by the State agency under the State plan approved under this part; and

(B) each support order established or modified in the State on or after October 1, 1998.

(2) Linking of local registries

The State case registry may be established by linking local case registries of support orders through an automated information network, subject to this section.

(3) Use of standardized data elements

Such records shall use standardized data elements for both parents (such as names, social security numbers and other uniform identification numbers, dates of birth, and case identification numbers), and contain such other information (such as on case status) as the Secretary may require.

(4) Payment records

Each case record in the State case registry with respect to which services are being provided under the State plan approved under this part and with respect to which a support order has been established shall include a record of--

(A) the amount of monthly (or other periodic) support owed under the order, and other amounts (including arrearages, interest or late payment penalties, and fees) due or overdue under the order;

(B) any amount described in subparagraph (A) that has been collected;

(C) the distribution of such collected amounts;

(D) the birth date and, beginning not later than October 1, 1999, the social security number, of any child for whom the order requires the provision of support; and

(E) the amount of any lien imposed with respect to the order pursuant to section 666(a)(4) of this title.

(5) Updating and monitoring

The State agency operating the automated system required by this section shall promptly establish and update, maintain, and regularly monitor, case records in the State case registry with respect to which services are being provided under the State plan approved under this part, on the basis of--

(A) information on administrative actions and administrative and judicial proceedings and orders relating to paternity and support;

(B) information obtained from comparison with Federal, State, or local sources of information;

(C) information on support collections and distributions; and

(D) any other relevant information.

(f) Information comparisons and other disclosures of information

The State shall use the automated system required by this section to extract information from (at such times, and in such standardized format or formats, as may be required by the Secretary), to share and compare information with, and to receive information from, other data bases and information comparison services, in order to obtain (or provide) information necessary to enable the State agency (or the Secretary or other State or Federal agencies) to carry out this part, subject to section 6103 of the Internal Revenue Code of 1986. Such information comparison activities shall include the following:

(1) Federal Case Registry of Child Support Orders

Furnishing to the Federal Case Registry of Child Support Orders established under section 653(h) of this title (and update as necessary, with information including notice of expiration of orders) the minimum amount of information on child support cases recorded in the State case registry that is necessary to operate the registry (as specified by the Secretary in regulations).

(2) Federal Parent Locator Service

Exchanging information with the Federal Parent Locator Service for the purposes specified in section 653 of this title.

(3) Temporary family assistance and Medicaid agencies

Exchanging information with State agencies (of the State and of other States) administering programs funded under part A of this subchapter, programs operated under a State plan approved under subchapter XIX of this chapter, and other programs designated by the Secretary, as necessary to perform State agency responsibilities under this part and under such programs.

(4) Intrastate and interstate information comparisons

Exchanging information with other agencies of the State, agencies of other States, and interstate information networks, as necessary and appropriate to carry out (or assist other States to carry out) the purposes of this part.

(5) Private industry councils receiving welfare-to-work grants

Disclosing to a private industry council (as defined in section 603(a)(5)(D)(ii) of this title) to which funds are provided under section 603(a)(5) of this title the names, addresses, telephone numbers, and identifying case number information in the State program funded under part A [42 U.S.C.A. § 601 et seq.], of noncustodial parents residing in the service delivery area of the private industry council, for the purpose of identifying and contacting noncustodial parents regarding participation in the program under section 603(a)(5) of this title.

(g) Collection and distribution of support payments

(1) In general

The State shall use the automated system required by this section, to the maximum extent feasible, to assist and facilitate the collection and disbursement of support payments through the State disbursement unit operated under section 654b of this title, through the performance of functions, including, at a minimum--

(A) transmission of orders and notices to employers (and other debtors) for the withholding of income--

(i) within 2 business days after receipt of notice of, and the income source subject to, such withholding from a court, another State, an employer, the Federal Parent Locator Service, or another source recognized by the State; and

(ii) using uniform formats prescribed by the Secretary;

(B) ongoing monitoring to promptly identify failures to make timely payment of support; and

(C) automatic use of enforcement procedures (including procedures authorized pursuant to section 666(c) of this note) if payments are not timely made.

(2) Business day defined

As used in paragraph (1), the term "business day" means a day on which State offices are open for regular business.

(h) Expedited administrative procedures

The automated system required by this section shall be used, to the maximum extent feasible, to implement the expedited administrative procedures required by section 666(c) of this title.

42 U.S.C. § 654b

§ 654b. Collection and disbursement of support payments

(a) State disbursement unit

(1) In general

In order for a State to meet the requirements of this section, the State agency must establish and operate a unit (which shall be known as the "State disbursement unit") for the collection and disbursement of payments under support orders--

(A) in all cases being enforced by the State pursuant to section 654(4) of this title; and

(B) in all cases not being enforced by the State under this part in which the support order is initially issued in the State on or after January 1, 1994, and in which the income of the noncustodial parent is subject to withholding pursuant to section 666(a)(8)(B) of this title.

(2) Operation

The State disbursement unit shall be operated--

(A) directly by the State agency (or 2 or more State agencies under a regional cooperative agreement), or (to the extent appropriate) by a contractor responsible directly to the State agency; and

(B) except in cases described in paragraph (1)(B), in coordination with the automated system established by the State pursuant to section 654a of this title.

(3) Linking of local disbursement units

The State disbursement unit may be established by linking local disbursement units through an automated information network, subject to this section, if the Secretary agrees that the system will not cost more nor take more time to establish or operate than a centralized system. In addition, employers shall be given 1 location to which income withholding is sent.

(b) Required procedures

The State disbursement unit shall use automated procedures, electronic processes, and computer-driven technology to the maximum extent feasible, efficient, and economical, for the collection and disbursement of support payments, including procedures--

(1) for receipt of payments from parents, employers, and other States, and for disbursements to custodial parents and other obligees, the State agency, and the agencies of other States;

(2) for accurate identification of payments;

(3) to ensure prompt disbursement of the custodial parent's share of any payment; and

(4) to furnish to any parent, upon request, timely information on the current status of support payments under an order requiring payments to be made by or to the parent, except that in cases described in subsection (a)(1)(B) of this section, the State disbursement unit shall not be required to convert and maintain in automated form records of payments kept pursuant to section 666(a)(8)(B)(iii) of this title before the effective date of this section.

(c) Timing of disbursements

(1) In general

Except as provided in paragraph (2), the State disbursement unit shall distribute all amounts payable under section 657(a) of this title within 2 business days after receipt from the employer or other source of periodic income, if sufficient information identifying the payee is provided. The date of collection for amounts collected and distributed under this part is the date of receipt by the State disbursement unit, except that if current support is withheld by an employer in the month when due and is received by the State disbursement unit

in a month other than the month when due, the date of withholding may be deemed to be the date of collection.

(2) Permissive retention of arrearages

The State disbursement unit may delay the distribution of collections toward arrearages until the resolution of any timely appeal with respect to such arrearages.

(d) Business day defined

As used in this section, the term "business day" means a day on which State offices are open for regular business.

42 U.S.C. § 655

§ 655. Payments to States

(a) Amounts payable each quarter

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(4)(A)(i) If--

(I) the Secretary determines that a State plan under section 654 of this title would (in the absence of this paragraph) be disapproved for the failure of the State to comply with a particular subparagraph of section 654(24) of this title, and that the State has made and is continuing to make a good faith effort to so comply; and

(II) the State has submitted to the Secretary a corrective compliance plan that describes how, by when, and at what cost the State will achieve such compliance, which has been approved by the Secretary, then the Secretary shall not disapprove the State plan under section 654 of this title, and the Secretary shall reduce the amount otherwise payable to the State under paragraph (1)(A) of this subsection for the fiscal year by the penalty amount.

(ii) All failures of a State during a fiscal year to comply with any of the requirements referred to in the same subparagraph of section 654(24) of this title shall be considered a single failure of the State to comply with that subparagraph during the fiscal year for purposes of this paragraph.

(B) In this paragraph:

(i) The term "penalty amount" means, with respect to a failure of a State to comply with a subparagraph of section 654(24) of this title--

(I) 4 percent of the penalty base, in the case of the first fiscal year in which such a failure by the State occurs (regardless of whether a penalty is imposed under this paragraph with respect to the failure);

(II) 8 percent of the penalty base, in the case of the second such fiscal year;
(III) 16 percent of the penalty base, in the case of the third such fiscal year;
(IV) 25 percent of the penalty base, in the case of the fourth such fiscal year; or
(V) 30 percent of the penalty base, in the case of the fifth or any subsequent such fiscal year.
(ii) The term "penalty base" means, with respect to a failure of a State to comply with a subparagraph of section 454(24) during a fiscal year, the amount otherwise payable to the State under paragraph (1)(A) of this subsection for the preceding fiscal year.
(C)(i) The Secretary shall waive a penalty under this paragraph for any failure of a State to comply with section 654(24)(A) of this title during fiscal year 1998 if--
(I) on or before August 1, 1998, the State has submitted to the Secretary a request that the Secretary certify the State as having met the requirements of such section;
(II) the Secretary subsequently provides the certification as a result of a timely review conducted pursuant to the request; and
(III) the State has not failed such a review.
(ii) If a State with respect to which a reduction is made under this paragraph for a fiscal year with respect to a failure to comply with a subparagraph of section 654(24) of this title achieves compliance with such subparagraph by the beginning of the succeeding fiscal year, the Secretary shall increase the amount otherwise payable to the State under paragraph (1)(A) of this subsection for the succeeding fiscal year by an amount equal to 90 percent of the reduction for the fiscal year.
(iii) The Secretary shall reduce the amount of any reduction that, in the absence of this clause, would be required to be made under this paragraph by reason of the failure of a State

to achieve compliance with section 654(24)(B) of this title during the fiscal year, by an amount equal to 20 percent of the amount of the otherwise required reduction, for each State performance measure described in section 658(b)(4) of this title with respect to which the applicable percentage under section 658(b)(6) of this title for the fiscal year is 100 percent, if the Secretary has made the determination described in section 658(b)(5)(B) of this title with respect to the State for the fiscal year.

(D) The Secretary may not impose a penalty under this paragraph against a State with respect to a failure to comply with section 654(24)(B) of this title for a fiscal year if the Secretary is required to impose a penalty under this paragraph against the State with respect to a failure to comply with section 654(24)(A) of this title for the fiscal year.

(5)(A)(i) If-

(I) the Secretary determines that a State plan under section 654 of this title would (in the absence of this paragraph) be disapproved for the failure of the State to comply with subparagraphs (A) and (B)(i) of section 654(27) of this title, and that the State has made and is continuing to make a good faith effort to so comply; and

(II) the State has submitted to the Secretary, not later than April 1, 2000, a corrective compliance plan that describes how, by when, and at what cost the State will achieve such compliance, which has been approved by the Secretary, then the Secretary shall not disapprove the State plan under section 654 of this title, and the Secretary shall reduce the amount otherwise payable to the State under paragraph (1)(A) of this subsection for the fiscal year by the penalty amount

(ii) All failures of a State during a fiscal year to comply with any of the requirements of section 654b of this title shall be considered a single failure of the State to comply with

subparagraphs (A) and (B)(i) of section 654(27) of this title during the fiscal year for purposes of this paragraph.
(B) In this paragraph:
(i) The term "penalty amount" means, with respect to a failure of a State to comply with subparagraphs (A) and (B)(i) of section 654(27) of this title--
(I) 4 percent of the penalty base, in the case of the 1st fiscal year in which such a failure by the State occurs (regardless of whether a penalty is imposed in that fiscal year under this paragraph with respect to the failure), except as provided in subparagraph (C)(ii) of this paragraph;
(II) 8 percent of the penalty base, in the case of the 2nd such fiscal year;
(III) 16 percent of the penalty base, in the case of the 3rd such fiscal year;
(IV) 25 percent of the penalty base, in the case of the 4th such fiscal year; or
(V) 30 percent of the penalty base, in the case of the 5th or any subsequent such fiscal year.
(ii) The term "penalty base" means, with respect to a failure of a State to comply with subparagraphs (A) and (B)(i) of section 654(27) of this title during a fiscal year, the amount otherwise payable to the State under paragraph (1)(A) of this subsection for the preceding fiscal year.
(C)(i) The Secretary shall waive all penalties imposed against a State under this paragraph for any failure of the State to comply with subparagraphs (A) and (B)(i) of section 654(27) of this title if the Secretary determines that, before April 1, 2000, the State has achieved such compliance.
(ii) If a State with respect to which a reduction is required to be made under this paragraph with respect to a failure to comply with subparagraphs (A) and (B)(i) of section 654(27) of this title achieves such compliance on or after April 1, 2000, and on or before September 30, 2000, then the penalty

amount applicable to the State shall be 1 percent of the penalty base with respect to the failure involved.

(D) The Secretary may not impose a penalty under this paragraph against a State for a fiscal year for which the amount otherwise payable to the State under paragraph (1)(A) of this subsection is reduced under paragraph (4) of this subsection for failure to comply with section 654(24)(A) of this title.

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CHAPTER III--OFFICE OF CHILD SUPPORT ENFORCEMENT (CHILD SUPPORT ENFORCEMENT PROGRAM), ADMINISTRATION FOR CHILDREN AND FAMILIES, DEPARTMENT OF HEALTH AND HUMAN SERVICES
PART 301--STATE PLAN APPROVAL AND GRANT PROCEDURES
Current through March 25, 2003; 68 FR 14521

§ 301.13 Approval of State plans and amendments.

The State plan consists of written documents furnished by the State to cover its Child Support Enforcement program under title IV-D of the Act. After approval of the original plan by the Office, all relevant changes, required by new statutes, rules, regulations, interpretations, and court decisions, are required to be submitted currently so that the Office may determine whether the plan continues to meet Federal requirements and policies.

(a) Submittal. State plans and revisions of the plans are submitted first to the State governor or his designee for review in accordance with § 301.12, and then to the regional office. The States are encouraged to obtain consultation of the regional staff when a plan is in process of preparation or revision.

(b) Review. The Office of Child Support Enforcement in the regional offices is responsible for review of State plans and amendments. It also initiates discussion with the IV-D agency on clarification of significant aspects of the plan which come to its attention in the course of this review. State

plan material on which the regional staff has questions concerning the application of Federal policy is referred with recommendations as required to the Office of Child Support Enforcement in the central office for technical assistance. Comments and suggestions, including those of consultants in specified areas, may be prepared by the central office for use by the regional staff in negotiations with the IV-D agency.

(c) Action. The Regional Office exercises delegated authority to take affirmative action on the State plan and amendments thereto on the basis of policy statements or precedents previously approved by the Director. The Director retains authority for determining that proposed plan material is not approvable, or that a previously approved plan no longer meets the requirements for approval, except that a final determination of disapproval may not be made without prior consultation and discussion by the Director with the Secretary. The Regional Office or the Director formally notifies the IV-D agency of the actions taken on the State plan or revisions thereto.

(d) Basis for approval. Determinations as to whether the State plan (including plan amendments and administrative practice under the plan) originally meets or continues to meet the requirements for approval are based on relevant Federal statutes and regulations. Guidelines are furnished to assist in the interpretation of the regulations.

(e) Prompt approval of the State plan. The determination as to whether the State plan submitted for approval conforms to the requirements for approval under the Act and regulations issued pursuant thereto shall be made promptly and not later than the 90th day following the date on which the plan submittal is received in the regional office, unless the Regional Office has secured from the IV-D agency a written agreement to extend that period.

(f) Prompt approval of plan amendments. Any amendment of an approved State plan may, at the option of the State, be

considered as a submission of a new State plan. If the State requests that such amendments be so considered, the determination as to its conformity with the requirements for approval shall be made promptly and not later than the 90th day following the date on which such a request is received in the Regional Office with respect to an amendment that has been received in such office, unless the Regional Commissioner has secured from the State agency a written agreement to extend that period.

(g) Effective date. The effective date of a new plan may not be earlier than the first day of the calendar quarter in which an approvable plan is submitted.

(Approved by the Office of Management and Budget under control number 0960- 0253)

[51 FR 37731, Oct. 24, 1986]

45 C.F.R. § 301.14

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Current through March 25, 2003; 68 FR 14521

§ 301.14 Administrative review of certain administrative decisions.

Any State dissatisfied with a determination of the Director pursuant to § 301.13 (e) or (f) with respect to any plan or amendment may, within 60 days after the date of receipt of notification of such determination, file a petition with the Regional Office asking the Director for reconsideration of the issue of whether such plan or amendment conforms to the requirements for approval under the Act and pertinent Federal requirements. Within 30 days after receipt of such a petition, the Director shall notify the State of the time and place at which the hearing for the purpose of reconsidering such issue will be held. Such hearing shall be held not less than 30 days nor more than 60 days after the date notice of such hearing is furnished to the State, unless the Director and the State agree in writing on another time. The hearing procedures contained in 45 CFR Part 213 applicable to § 201.4 of this title shall apply to reconsiderations brought under this section. A determination affirming, modifying, or

reversing the Director's original decision will be made within 60 days of the conclusion of the hearing. Action pursuant to an initial determination by the Director described in such § 301.1 (e) or (f) that a plan or amendment is not approvable shall not be stayed pending the reconsideration, but in the event that the Director subsequently determines that his original decision was incorrect he shall certify restitution forthwith in a lump sum of any funds incorrectly withheld or otherwise denied.

45 C.F.R. § 302.85

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CHAPTER III--OFFICE OF CHILD SUPPORT ENFORCEMENT (CHILD SUPPORT ENFORCEMENT PROGRAM), ADMINISTRATION FOR CHILDREN AND FAMILIES, DEPARTMENT OF HEALTH AND HUMAN SERVICES
PART 302--STATE PLAN REQUIREMENTS
Current through March 25, 2003; 68 FR 14521

§ 302.85 Mandatory computerized support enforcement system.

(a) General. The State plan shall provide that the State will have in effect a computerized support enforcement system:
(1) By October 1, 1997, which meets all the requirements of Title IV-D of the Act which were enacted on or before the date of enactment of the Family Support Act of 1988, Pub.L. 100-485, in accordance with §§ 307.5 and 307.10 of this chapter and the OCSE guideline entitled "Automated Systems for Child Support Enforcement: A Guide for States." This guide is available from the Child Support Information Systems Division, Office of State Systems, ACF, 370 L'Enfant Promenade, SW., Washington, DC 20447; and
(2) By October 1, 2000, which meets all the requirements of title IV-D of the Act enacted on or before the date of enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub.L. 104-193, in accordance with §§ 307.5 and 307.11 of this chapter and the

OCSE guideline referenced in paragraph (a)(1) of this section.

(b) Waiver--

(1) Request for waiver. The State may apply for a waiver of any condition for initial approval of an APD in § 307.15(b) of this chapter, or any system functional requirement in § 307.10 of this chapter, by the submission of a request for waiver under § 307.5 of this chapter.

(2) Basis for granting waiver. The Secretary will grant a State a waiver if a State demonstrates that it has an alternative approach to APD requirements or an alternative system configuration, as defined in § 307.1 of this chapter, that enables the State, in accordance with part 305 of this chapter, to be in substantial compliance with all other requirements of this chapter; and either:

(i) The waiver request meets the criteria set forth in section 1115(c)(1), (2) and (3) of the Act; or

(ii) The State provides written assurances that steps will be taken to otherwise improve the State's Child Support Enforcement program.

[46 FR 47793, Sept. 30, 1981; 47 FR 57281, Dec. 23, 1982; 49 FR 33260, 33263, Aug. 22, 1984; 51 FR 37731, Oct. 24, 1986; 57 FR 47002, Oct. 14, 1992; 61 FR 67241, Dec. 20, 1996; 63 FR 44814, Aug. 21, 1998]

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PART 307--COMPUTERIZED SUPPORT ENFORCEMENT SYSTEMS
Current through March 25, 2003; 68 FR 14521

§ 307.1 Definitions.

(a) Alternative approach to APD requirements means that the State has developed an APD that does not meet all conditions for APD approval in § 307.15(b) resulting in the need for a waiver under § 307.5.
(b) Business day means a day on which State offices are open for business.
(c) Alternative system means the separate manual and/or automated processes that perform one or more of the required functions separately from the base system and that interfaces with the base system to ensure that the State can meet all requirements for purposes of the audit prescribed in section 403(h) of the Act. These separate processes may involve geographic areas, such as counties; administrative jurisdictions, such as courts; or separate means by which the State meets particular program requirements, e.g., collection of support for non-AFDC cases.
(d) Alternative system configuration means an alternative to a comprehensive computerized support enforcement system.

It includes a base system with electronic linkages to an alternative system(s), which is not part of the State's computerized support enforcement project (i.e., not the State's sole system effort), but which is necessary to meet the functional requirements of the statewide, comprehensive computerized support enforcement system under § 307.10, or § 307.11.

(e) Base system means the hardware, operational software, applications software and electronic linkages in an alternative system configuration which allow the State to monitor, account for and control all support enforcement services and activities under the State plan.

(f) Certification means approval of an operational computerized support enforcement system based on a determination that the system has an efficient and effective design and is comprehensive, except where a waiver applies.

(g) Comprehensive means that a computerized support enforcement system meets the requirements prescribed in § 307.10, or § 307.11 of this part, as further defined in the OCSE guideline entitled "Automated Systems for Child Support Enforcement: A Guide for States."

(h) Computerized support enforcement system means a comprehensive, statewide system or an alternative system configuration which encompasses all political subdivisions within the State and which effectively and efficiently;

(1) Introduces, processes, accounts for and monitors data used by the Child Support Enforcement program in carrying out activities under the State plan; and

(2) Produces utilization and management information about support enforcement services as required by the State IV-D agency and Federal government for program administration and audit purposes.

(i) Planning means:

(1) The preliminary project activity to determine the requirements necessitating the project, the activities to be

undertaken, and the resources required to complete the project;

(2) The preparation of an APD;

(3) The preparation of a detailed project plan describing when and how the computer system will be designed or transferred and adapted; and

(4) The preparation of a detailed implementation plan describing specific training, testing, and conversion plans to install the computer system.

(j) The following terms are defined at 45 CFR part 95, subpart F, in § 95.605:

"Advance Planning Document";

"Annually Updated APD";

"Design" or "System Design";

"Development";

"Enhancement";

"Implementation Advance Planning Document";

"Initial APD";

"Installation";

"Operation";

"Planning Advance Planning Document";

"Requirements Analysis"; and

"Software".

(k) The definitions found in § 301.1 of this chapter are also applicable to this part.

[51 FR 45330, Dec. 18, 1986; 55 FR 4379, Feb. 7, 1990; 57 FR 47002, Oct. 14, 1992; 63 FR 44814, Aug. 21, 1998]

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Current through March 25, 2003; 68 FR 14521

307.5 Mandatory computerized support enforcement systems.

(a) Basic requirement.
(1) By October 1, 1997, each State must have in effect an operational computerized support enforcement system, which meets Federal requirements under § 302.85(a)(1) of this chapter, OCSE will review each system to certify that these requirements are met; and
(2) By October 1, 2000, each State must have in effect an operational computerized support enforcement system, which meets Federal requirements under § 302.85(a)(2) of this chapter. OCSE will review each system to certify that these requirements are met.
(b) Waiver option. A State may apply for a waiver of any functional requirement in § 307.10, or § 307.11 by presenting a plan for an alternative system configuration, or a waiver of any conditions for APD approval in § 307.15(b) by presenting an alternative approach. Waiver requests must be submitted and approved as part of the State's APD or APD update.

(c) Conditions for waiver. The Secretary may grant a State a waiver if:

(1) The State demonstrates that it has an alternative approach to the APD requirements or an alternative system configuration that enables the State, in accordance with part 305 of this chapter, to be in substantial compliance with the other requirements of this chapter; and either:

(2) The waiver request meets the criteria set forth in section 1115(c)(1), (2) and (3) of the Act; or

(3) The State provides written assurance that steps will be taken to otherwise improve the State's Child Support Enforcement program.

(d) APD submittal requirements for alternative system configuration. APDs submitted by States which include requests for waiver for an alternative system configuration must, in addition to meeting conditions of § 307.15(b):

(1) Describe the State's base system;

(2) Include a detailed description of the separate automated or manual processes the State plans to use and how they will interface with the base system;

(3) Provide documentation that the alternative system configuration will enable the State to be in substantial compliance with title IV-D of the Act in accordance with section 403(h) of the Act and implementing regulations. In addition, if the State is subject to a Notice under § 305.99 of this part that it did not substantially comply with one or more of the requirements of title IV-D of the Act, at the time a waiver request is submitted, the State must:

(i) Demonstrate that the deficiency is not related to or caused by the performance of the system; or

(ii) Specify the corrective action taken to modify the system if the system contributed to the deficiency.

(e) APD submittal requirements for alternative approach. APDs submitted by States which include requests for waiver of conditions for APD approval in § 307.15(b) must

demonstrate why meeting the conditions is unnecessary or inappropriate.

(f) Review of waiver requests.

(1) The Office will review waiver requests to assure that all necessary information is provided, that all processes provide for effective and efficient program operation, and that the conditions for waiver in paragraph (d) of this section are met.

(2) When a waiver is approved, it becomes part of the State's approved APD. A waiver is subject to the APD suspension provisions in § 307.40.

(3) When a waiver is disapproved, the APD will be disapproved. The APD disapproval is a final administrative decision and is not subject to administrative appeal.

(g) FFP limitations.

(1) The provisions of §§ 307.30 and 307.35 apply to requests for FFP for costs of computerized support enforcement systems.

(2) FFP for alternative system configurations is further limited as follows:

(i) FFP is available at the enhanced matching rate for development of the base system and for hardware, operational system software, and electronic linkages with the separate components of an alternative system configuration.

(ii) FFP is available at the applicable matching rate for minor alterations to the separate automated or manual processes that are part of an alternative system configuration and for operating costs including hardware, operational software and applications software of a computerized support enforcement system.

(iii) FFP is not available for developing new systems or making major changes and enhancements to separate automated or manual processes so that alternative system configurations meet conditions for waiver.

[57 FR 47003, Oct. 14, 1992; 61 FR 67241, Dec. 20, 1996; 63 FR 44814, Aug. 21, 1998]

45 C.F.R. § 307.10

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PART 307--COMPUTERIZED SUPPORT ENFORCEMENT SYSTEMS
Current through March 25, 2003; 68 FR 14521

§ 307.10 Functional requirements for computerized support enforcement systems in operation by October 1, 1997.

At a minimum, each State's computerized support enforcement system established under the title IV-D State plan at § 302.85(a)(1) of this chapter must:
(a) Be planned, designed, developed, installed or enhanced in accordance with an initial and annually updated APD approved under § 307.15; and
(b) Control, account for, and monitor all the factors in the support collection and paternity determination processes under the State plan. At a minimum this must include:
(1) Maintaining identifying information such as social security numbers, names, dates of birth, home addresses and mailing addresses (including postal zip codes) on individuals against whom support obligations are sought to be established or enforced and on individuals to whom support obligations are owed, and other data as required by the Office;

(2) Periodically verifying the information on individuals referred to in paragraph (b)(1) of this section with Federal, State and local agencies, both intrastate and interstate;
(3) Maintaining data necessary to meet Federal Reporting Requirements on a timely basis as prescribed by the Office;
(4) Maintaining information pertaining to:
(i) Delinquency and enforcement activities;
(ii) Intrastate, interstate and Federal location of absent parents;
(iii) The establishment of paternity; and
(iv) The establishment of support obligations;
(5) Collecting and distributing both intrastate and interstate support payments;
(6) Computing and distributing incentive payments to political subdivisions which share in the cost of funding the program and to other political subdivisions based on efficiency and effectiveness if the State has chosen to pay such incentives;
(7) Maintaining accounts receivable on all amounts owed, collected, and distributed;
(8) Maintaining costs of all services rendered, either directly or by interfacing with State financial management and expenditure information;
(9) Accepting electronic case referrals and update information from the State's title IV-A program and using that information to identify and manage support enforcement cases;
(10) Transmitting information electronically to provide data to the State's TANF system so that the IV-A agency can determine (and report back to the IV-D system) whether a collection of support causes a change in eligibility for, or the amount of aid under, the TANF program;
(11) Providing security to prevent unauthorized access to, or use of, the data in the system;

(12) Providing management information on all IV-D cases under the State plan from initial referral or application through collection and enforcement;
(13) Providing electronic data exchange with the State Medicaid system to provide for case referral and the transfer of the medical support information specified in 45 CFR 303.30 and 303.31;
(14) Using automated processes to assist the State in meeting State plan requirements under part 302 of this chapter and Standards for program operations under part 303 of this chapter, including but not limited to:
(i) The automated maintenance and monitoring of accurate records of support payments;
(ii) Providing automated maintenance of case records for purposes of the management and tracking requirements in § 303.2 of this chapter;
(iii) Providing title VI-D case workers with on-line access to automated sources of absent parent employer and wage information maintained by the State when available, by establishing an electronic link or by obtaining an extract of the data base and placing it on-line for access throughout the State;
(iv) Providing locate capability by automatically referring cases electronically to locate sources within the State (such as State motor vehicle department, State department of revenue, and other State agencies), and to the Federal Parent Locator Service and utilizing electronic linkages to receive return locate information and place the information on-line to title IV-D case workers throughout the State;
(v) Providing capability for electronic funds transfer for purposes of income withholding and interstate collections;
(vi) Integrating all processing of interstate cases with the computerized support enforcement system, including the central registry; and

(15) Providing automated processes to enable the Office to monitor State operations and assess program performance through the audit conducted under section 452(a) of the Act.

[50 FR 19657, May 9, 1985; 51 FR 37732, Oct. 24, 1986; 54 FR 32314, Aug. 4, 1989; 57 FR 47003, Oct. 14, 1992; 63 FR 44815, Aug. 21, 1998]

45 C.F.R. § 307.11

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Current through March 25, 2003; 68 FR 14521

§ 307.11 Functional requirements for computerized support enforcement systems in operation by October 1, 2000.

At a minimum, each State's computerized support enforcement system established and operated under the title IV-D State plan at § 302.85(a)(2) of this chapter must:
(a) Be planned, designed, developed, installed or enhanced, and operated in accordance with an initial and annually updated APD approved under § 307.15 of this part;
(b) Control, account for, and monitor all the factors in the support collection and paternity determination processes under the State plan. At a minimum, this includes the following:
(1) The activities described in § 307.10, except paragraphs (b)(3), (8) and (11); and
(2) The capability to perform the following tasks with the frequency and in the manner required under, or by this chapter:

(i) Program requirements. Performing such functions as the Secretary may specify related to management of the State IV-D program under this chapter including:

(A) Controlling and accounting for the use of Federal, State and local funds in carrying out the program either directly, through an auxiliary system or through an interface with State financial management and expenditure information; and

(B) Maintaining the data necessary to meet Federal reporting requirements under this chapter in a timely basis as prescribed by the Office;

(ii) Calculation of Performance Indicators. Enabling the Secretary to determine the incentive payments and penalty adjustments required by sections 452(g) and 458 of the Act by:

(A) Using automated processes to:

(1) Maintain the requisite data on State performance for paternity establishment and child support enforcement activities in the State; and

(2) Calculate the paternity establishment percentage for the State for each fiscal year;

(B) Having in place system controls to ensure the completeness, and reliability of, and ready access to, the data described in paragraph (b)(2)(i)(A)(1) of this section, and the accuracy of the calculation described in paragraph (b)(2)(i)(A)(2) of this section; and

(iii) System Controls: Having systems controls (e.g., passwords or blocking of fields) to ensure strict adherence to the policies described in Sec. 307.13(a); and

(3) Activities described in the Act that were added by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub.L. 104- 193, not otherwise addressed in this part.

(c) Collection and Disbursement of Support Payments. To the maximum extent feasible, assist and facilitate the

collection and disbursement of support payments through the State disbursement unit operated under section 454B of the Act through the performance of functions which, at a minimum, include the following:

(1) Transmission of orders and notices to employers and other debtors for the withholding of income:

(i) Within 2 business days after receipt of notice of income, and the income source subject to withholding from a court, another State, an employer, the Federal Parent Locator Service, or another source recognized by the State; and

(ii) Using uniform formats prescribed by the Secretary;

(2) Ongoing monitoring to promptly identify failures to make timely payment of support; and

(3) Automatic use of enforcement procedures, including procedures under section 466(c) of the Act if payments are not timely;

(d) Expedited Administrative Procedures. To the maximum extent feasible, be used to implement the expedited administrative procedures required by section 466(c) of the Act.

(e) State case registry. Have a State case registry that meets the requirements of this paragraph.

(1) Definitions. When used in this paragraph and paragraph (f) of this section, the following definitions shall apply.

(i) Participant means an individual who owes or is owed a duty of support, imposed or imposable by law, or with respect to or on behalf of whom a duty of support is sought to be established, or who is an individual connected to an order of support or a child support case being enforced.

(ii) Participant type means the custodial party, non-custodial parent, putative father, or child, associated with a case or support order contained in the State or Federal case registry.

(iii) locate request type refers to the purpose of the request for additional matching services on information sent to the Federal case registry, for example, a IV-D locate (paternity

or support establishment or support enforcement), parental kidnapping or custody and visitation.

(iv) locate source type refers to the external sources a locate submitter desires the information sent to the Federal case registry to also be matched against.

(2) The State case registry shall contain a record of:

(i) Every IV-D case receiving child support enforcement services under an approved State plan; and

(ii) Every support order established or modified in the State on or after October 1, 1998.

(3) Standardized data elements shall be included for each participant. These data elements shall include:

(i) Names;

(ii) Social security numbers;

(iii) Dates of birth;

(iv) Case identification numbers;

(v) Other uniform identification numbers;

(vi) Data elements required under paragraph (f)(1) of this section necessary for the operation of the Federal case registry;

(vii) Issuing State of an order; and

(viii) Any other information that the Secretary may require.

(4) The record required under paragraph (e)(2) of this section shall include information for every case in the State case registry receiving services under an approved State plan that has a support order in effect. The information must include:

(i) The amount of monthly (or other frequency) support owed under the order;

(ii) Other amounts due or overdue under the order including arrearages, interest or late payment penalties and fees;

(iii) Any amounts described in paragraph (e)(4) (i) and (ii) of this section that have been collected;

(iv) The distribution of such collected amounts;

(v) The birth date and, beginning no later than October 1, 1999, the name and social security number of any child for whom the order requires the provision of support; and
(vi) The amount of any lien imposed in accordance with section 466(a)(4) of the Act to enforce the order.
(5) Establish and update, maintain, and regularly monitor case records in the State case registry for cases receiving services under the State plan. To ensure information on an established IV-D case is up to date, the State should regularly update the system to make changes to the status of a case, the participants of a case, and the data contained in the case record. This includes the following:
(i) Information on administrative and judicial orders related to paternity and support;
(ii) Information obtained from comparisons with Federal, State or local sources of information;
(iii) Information on support collections and distributions; and
(iv) Any other relevant information.
(6) States may link local case registries of support orders through an automated information network in meeting paragraph (e)(2)(ii) of this section provided that all other requirements of this paragraph are met.
(f) Information Comparisons and other Disclosures of Information. Extract information, at such times and in such standardized format or formats, as may be required by the Secretary, for purposes of sharing and comparing with, and receiving information from, other data bases and information comparison services, to obtain or provide information necessary to enable the State, other States, the Office or other Federal agencies to carry out this chapter. As applicable, these comparisons and disclosures must comply with the requirements of section 6103 of the Internal Revenue Code of 1986 and the requirements of section 453 of the Act. The comparisons and sharing of information include:

(1) Effective October 1, 1998, (or for the child data, not later than October 1, 1999) furnishing the following information to the Federal case registry on participants in cases receiving services under the State plan and in support orders established or modified on or after October 1, 1998, and providing updates of such information within five (5) business days of receipt by the IV- D agency of new or changed, information, including information which would necessitate adding or removing a Family Violence indicator and notices of the expiration of support orders:

(i) State Federal Information Processing Standard (FIPS) code and optionally, county code;

(ii) State case identification number;

(iii) State member identification number;

(iv) Case type (IV-D, non-IV-D);

(v) Social security number and any necessary alternative social security numbers;

(vi) Name, including first, middle, last name and any necessary alternative names;

(vii) Sex (optional);

(viii) Date of birth;

(ix) Participant type (custodial party, non-custodial parent, putative father, child);

(x) Family violence indicator (domestic violence or child abuse);

(xi) Indication of an order;

(xii) Locate request type (optional);

(xiii) Locate source (optional); and

(xiv) Any other information of the Secretary may require.

(2) Requesting or exchanging information with the Federal parent locator service for the purposes specified in section 453 of the Act;

(3) Exchanging information with State agencies, both within and outside of the State, administering programs under titles IV-A and XIX of the Act, as necessary to perform State

agency responsibilities under this chapter and under such programs; and

(4) Exchanging information with other agencies of the State, and agencies of other States, and interstate information networks, as necessary and appropriate, to assist the State and other States in carrying out the purposes of this chapter.

[63 FR 44815, Aug. 21, 1998]

45 C.F.R. § 307.13

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Current through March 25, 2003; 68 FR 14521

§ 307.13 Security and confidentiality for computerized support enforcement systems in operation after October 1, 1997.

The State IV-D agency shall:
(a) Information integrity and security. Have safeguards on the integrity, accuracy, completeness of, access to, and use of data in the computerized support enforcement system. These safeguards shall include written policies concerning access to data by IV-D agency personnel, and the sharing of data with other persons to:
(1) Permit access to and use of data to the extent necessary to carry out the State IV-D program under this chapter; and
(2) Specify the data which may be used for particular IV-D program purposes, and the personnel permitted access to such data; and
(3) Permit access to and use of data for purposes of exchanging information with State agencies administering programs under titles IV-A and XIX of the Act to the extent necessary to carry out State agency responsibilities under

such programs in accordance with section 454A(f)(3) of the Act.

(b) Monitoring of access. Monitor routine access to and use of the computerized support enforcement system through methods such as audit trails and feedback mechanisms to guard against, and promptly identify unauthorized access or use;

(c) Training and information. Have procedures to ensure that all personnel, including State and local staff and contractors, who may have access to or be required to use confidential program data in the computerized support enforcement system are:

(1) Informed of applicable requirements and penalties, including those in section 6103 of the Internal Revenue Service Code and section 453 of the Act; and

(2) Adequately trained in security procedures; and

(d) Penalties. Have administrative penalties, including dismissal from employment, for unauthorized access to, disclosure or use of confidential information.

[63 FR 44816, Aug. 21, 1998]

45 C.F.R. § 307.15

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Current through March 25, 2003; 68 FR 14521

§ 307.15 Approval of advance planning documents for computerized support enforcement systems.

(a) Approval of an APD. The Office shall not approve the APD and annually updated APD unless the document, when implemented, will carry out the requirements of § 307.10, or § 307.11 of this part. Conditions for APD approval are specified in this section.
(b) Conditions for initial approval. In order to be approvable, an APD for a statewide computerized support enforcement system described under § 307.10, or § 307.11 must meet the following requirements:
(1) The APD must represent the sole systems effort being undertaken by the State in accordance with § 307.10, or § 307.11. If the State is requesting a waiver under § 302.85 of this chapter, the APD must specify the conditions for which waiver is requested;
(2) The APD must specify how the objectives of the computerized support enforcement system in § 307.10, or § 307.11 will be carried out throughout the State; this includes

a projection of how the proposed system will meet the functional requirements of § 307.10, or § 307.11 and how the single State system will encompass all political subdivisions in the State by October 1, 1997, or October 1, 2000 respectively.

(3) The APD must assure the feasibility of the proposed effort and provide for the conduct of a requirements analysis study which address all system components within the State and includes consideration of the program mission, functions, organization, services and constraints related to the computerized support enforcement system;

(4) The APD must indicate how the results of the requirements analysis study will be incorporated into the proposed system design, development, installation or enhancement;

(5) The APD must contain a description of each component within the proposed computerized support enforcement system as required by § 307.10, or § 307.11 and must describe information flows, input data, and output reports and uses;

(6) The APD must describe the security requirements to be employed in the proposed computerized support enforcement system;

(7) The APD must describe the intrastate and interstate interfaces set forth in § 307.10, or § 307.11 to be employed in the proposed computerized support enforcement system;

(8) The APD must describe the projected resource requirements for staff, hardware, and other needs and the resources available or expected to be available to meet the requirements;

(9) The APD must contain a proposed budget and schedule of life-cycle milestones relative to the size, complexity and cost of the project which at a minimum address requirements analysis, program design, procurement and project

management; and, a description of estimated expenditures by category and amount for:

(i) Items that are eligible for funding at the enhanced matching rate, and

(ii) items related to developing and operating the system that are eligible for Federal funding at the applicable matching rate;

(10) The APD must contain an implementation plan and backup procedures to handle possible failures in system planning, design, development, installation or enhancement.

(i) These backup procedures must include provision for independent validation and verification (IV & V) analysis of a State's system development effort in the case of States:

(A) that do not have in place a statewide automated child support enforcement system that meets the requirements of the FSA of 1988;

(B) States which fail to meet a critical milestone, as identified in their APDs;

(C) States which fail to timely and completely submit APD updates;

(D) States whose APD indicates the need for a total system redesign;

(E) States developing systems under waivers pursuant to section 452(d)(3) of the Social Security Act; or,

(F) States whose system development efforts we determine are at risk of failure, significant delay, or significant cost overrun.

(ii) Independent validation and verification efforts must be conducted by an entity that is independent from the State (unless the State receives an exception from OCSE) and the entity selected must:

(A) Develop a project workplan. The plan must be provided directly to OCSE at the same time it is given to the State.

(B) Review and make recommendations on both the management of the project, both State and vendor, and the

technical aspects of the project. The IV & V provider must provide the results of its analysis directly to OCSE at the same time it reports to the State.

(C) Consult with all stakeholders and assess the user involvement and buy-in regarding system functionality and the system's ability to meet program needs.

(D) Conduct an analysis of past project performance sufficient to identify and make recommendations for improvement.

(E) Provide risk management assessment and capacity planning services.

(F) Develop performance metrics which allow tracking project completion against milestones set by the State.

(iii) The RFP and contract for selecting the IV & V provider (or similar documents if IV & V services are provided by other State agencies) must include the experience and skills of the key personnel proposed for the IV & V analysis and specify by name the key personnel who actually will work on the project and must be submitted to OCSE for prior approval.

(11) The APD must describe each system considered during planning including the advantages of selecting the proposed solution. If a transfer system is not selected as the proposed solution, a transfer system must be among those systems considered. If a system that is already in place in the State could be enhanced to meet the requirements for a computerized support enforcement system, that system must be among the solutions considered;

(12) The APD must contain a cost benefit analysis of the proposed computerized support enforcement system and all alternatives considered that describes the proposed improvements to the IV-D program in both qualitative and quantitative terms;

(13) The APD must specify the basis for determining direct and indirect costs of the computerized support enforcement

system during development and operation, including the methodology for determining costs of planning, design, development, installation or enhancement that are eligible for 90 percent Federal funding versus costs of development and operations that are eligible for Federal funding at the applicable matching rate;

(14) The APD must contain a statement indicating the period of time the State expects to use the proposed computerized support enforcement system; and

(15) The APD must include any waiver requested in accordance with § 307.5 of this chapter.

(c) Conditions for approval of annual update. The APD for a computerized support enforcement system described under § 307.10, or § 307.11 must be updated annually. In order to be approvable, the annual update of an APD for a computerized support enforcement system described under § 307.10 must meet only those requirements of paragraph (b) of this section that are prescribed by instructions issued by the Office.

(Approved by the Office of Management and Budget under control number 0960- 0343.)

[50 FR 19657, May 9, 1985; 51 FR 37732, Oct. 24, 1986; 55 FR 4379, Feb. 7, 1990; 57 FR 47004, Oct. 14, 1992; 61 FR 67241, Dec. 20, 1996; 63 FR 44816, Aug. 21, 1998]

45 C.F.R. § 307.20

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Current through March 25, 2003; 68 FR 14521

§ 307.20 Submittal of advance planning documents for computerized support enforcement systems.

The State IV-D agency must submit an APD for a computerized support enforcement system, approved and signed by the State IV-D Director and the appropriate State official, in accordance with the submission process prescribed in 45 CFR part 95, subpart F.

[55 FR 4379, Feb. 7, 1990; 57 FR 47005, Oct. 14, 1992]

45 C.F.R. § 307.25

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Current through March 25, 2003; 68 FR 14521

§ 307.25 Review and certification of computerized support enforcement systems.

The Office will review, assess and inspect the planning, design, development, installation, enhancement and operation of computerized support enforcement systems developed under § 307.10, or § 307.11 to determine the extent to which such systems:
(a) Meet the requirements found in § 307.15; and
(b) Can be certified as meeting the requirements described in § 307.10 and in the OCSE guideline entitled "Automated Systems for Child Support Enforcement: A Guide for States".

[50 FR 19657, May 9, 1985; 57 FR 47005, Oct. 14, 1992; 63 FR 44817, Aug. 21, 1998]

45 C.F.R. § 307.30

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Current through March 25, 2003; 68 FR 14521

§ 307.30 Federal financial participation at the 90 percent rate for statewide computerized support enforcement systems.

(a) Conditions that must be met for FFP. During the Federal fiscal years 1996, and 1997, Federal financial participation is available at the 90 percent rate in expenditures for the planning, design, development, installation or enhancement of a computerized support enforcement system as described in §§ 307.5 and 307.10 limited to the amount in an advance planning document, or APDU submitted on or before September 30, 1995, and approved by OCSE if:
(1) The Office has approved an APD in accordance with § 307.15 of this part;
(2) The system meets the requirements specified in § 307.10;
(3) The Office determines that the expenditures incurred are consistent with the approved APD;
(4) The Office determines that the computerized support enforcement system or alternative system configuration is designed effectively and efficiently and will improve the management and administration of the State IV-D plan;

(5) The State IV-D agency agrees in writing to use the system for a period of time which is consistent with the APD approved by the Office; and

(6) The State or local government has ownership rights in software, software modifications and associated documentation that is designed, developed, installed, or enhanced with 90 percent FFP under this section subject to the Department of Health and Human Services license specified in paragraph (c) of this section.

(b) Federal financial participation in the costs of hardware and proprietary software.

(1) Until September 30, 1997, FFP at the 90 percent rate is available in expenditures for the rental or purchase of hardware for the planning, design, development, installation or enhancement of a computerized support enforcement system as described in § 307.10 in accordance with the limitation in paragraph (a) of this section.

(2) Until September 30, 1997, FFP at the 90 percent rate is available for expenditures for the rental or purchase of proprietary operating/vendor software necessary for the operation of hardware during the planning, design, development, installation or enhancement of a computerized support enforcement system in accordance with the limitation in paragraph (a) of this section, and the OCSE guideline entitled "Automated Systems for Child Support Enforcement: A Guide for States." FFP at the 90 percent rate is not available for proprietary application software developed specifically for a computerized support enforcement system. § 307.35 of this part regarding reimbursement at the applicable matching rate.)

(c) HHS rights to software. The Department of Health and Human Services reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use for Federal government purposes, software, software modifications, and

documentation developed under § 307.10. This license would permit the Department to authorize the use of software, software modifications and documentation developed under § 307.10 in another project or activity funded by the Federal government.

(d) Consequences of suspension of the APD. If the Office suspends approval of an APD in accordance with § 307.40 of this part during the planning design, development, installation, enhancement or operation of the system:

(1) The Office shall disallow FFP as of the date the State failed to comply substantially with the approved APD; and

(2) FFP at the 90 and applicable matching rates is not available in any expenditures incurred under the APD after the date of the suspension until the date the Office determines that the State has taken the actions specified in the notice of suspension described in § 307.40(a)(2). The Office will notify the State in writing upon making such a determination. (See § 307.35(b) regarding reimbursement for disallowed expenditures under Part 95, Subpart F of this title.)

[50 FR 19657, May 9, 1985; 55 FR 4379, Feb. 7, 1990; 57 FR 47005, Oct. 14, 1992; 63 FR 44817, Aug. 21, 1998]

45 C.F.R. § 307.31

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Current through March 25, 2003; 68 FR 14521

§ 307.31 Federal financial participation at the 80 percent rate for computerized support enforcement systems.

(a) Conditions that must be met for 80 percent FFP. Until September 30, 2001, Federal financial participation is available at the 80 percent rate to States, Territories and systems defined in 42 U.S.C. 655(a)(3)(B)(iii) [455(a)(3)(B)(iii) of the Act] (hereafter referred to as "States") for expenditures for the planning, design, development, installation, or enhancement of a computerized support enforcement system meeting the requirements as described in §§ 307.5 and 307.10 or 42 U.S.C. § 654(16) [454(16) of the Act], if:
(1) The Office has approved an APD in accordance with § 307.15;
(2) The Office determines that the system meets the requirements specified in § 307.10, or 42 U.S.C. 654(16) [454(16) of the Act];
(3) The Office determines that the expenditures incurred are consistent with the approved APD;

(4) The Office determines that the computerized support enforcement system is designed effectively and efficiently and will improve the management and administration of the State IV-D plan;

(5) The State IV-D agency agrees in writing to use the system for a period of time which is consistent with the APD approved by the Office; and

(6) The State or local government has ownership rights in software, software modifications and associated documentation that is designed, developed, installed or enhanced under this section subject to the Department of Health and Human Services license specified in paragraph (c) of this section.

(b) Federal financial participation in the costs of hardware and proprietary software.

(1) Until September 30, 2001, FFP at the 80 percent rate is available for expenditures for the rental or purchase of hardware for the planning, design, development, installation, or enhancement of a computerized support enforcement system as described in § 307.10 or 42 U.S.C. 654(16) [454(16) of the Act].

(2) Until September 30, 2001, FFP at the 80 percent rate is available for the rental or purchase of proprietary operating/vendor software necessary for the operation of hardware during the planning, design, development, installation, enhancement or operation of a computerized support enforcement system in accordance with the OCSE guideline entitled "Automated Systems for Child Support Enforcement: A Guide for States." FFP at the 80 percent rate is not available for proprietary application software developed specifically for a computerized support enforcement system. (See § 307.35 regarding reimbursement at the applicable matching rate.)

(c) HHS rights to software. The Department of Health and Human Services reserves a royalty-free, non-exclusive and

irrevocable license to reproduce, publish or otherwise use, and to authorize others to use for Federal government purposes, software, software modifications, and documentation developed under § 307.10 or 42 U.S.C. 654(16) [454(16) of the Act]. This license would permit the Department to authorize the use of software, software modifications and documentation developed under § 307.10 or 42 U.S.C. 654(16) [454(16) of the Act] in another project or activity funded by the Federal government.

(d) Consequences of suspension of the APD. If the Office suspends approval of an APD in accordance with § 307.40 during the planning, design, development, installation, enhancement or operation of the system:

(1) The Office shall disallow FFP as of the date the State failed to comply substantially with the approved APD; and

(2) FFP at the 80 percent and applicable matching rates is not available in any expenditure incurred under the APD after the date of the suspension until the date the Office determines that the State has taken the actions specified in the notice of suspension described in § 307.40(a). The Office will notify the State in writing upon making such a determination.

(e) Limitation on 80 percent funding. Federal financial participation at the 80 percent rate may not exceed $400,000,000 in the aggregate for fiscal years 1996 through 2001.

(f) Allocation formula. Payments at the 80 percent rate to individual States, Territories and systems defined in 42 U.S.C. 655(a)(3)(B)(iii) [455(a)(3)(B)(iii) of the Act] (hereafter referred to as "States") will be equal to the sum of:

(1) A base amount of $2,000,000; and

(2) An additional amount defined as the Allocation Factor computed as follows:

(i) Allocation Factor--an average of the Caseload and Census Factors which yields the percentage that is used to calculate

a State's allocation of the funds available, less amounts set aside pursuant to paragraph (f)(1) of this section.

(ii) Caseload Factor--a ratio of the six-year average IV-D caseload as reported by a State for fiscal years 1990 through 1995 to the total six-year average IV-D caseload in all States for the same period;

(iii) Census Factor--a ratio of the number of children in a State with one parent living elsewhere as reported in the 1992 Current Population Survey-- Child Support Supplement to the total number of such children in all States.

[63 FR 44405, Aug. 19, 1998]

45 C.F.R. § 307.35

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§ 307.35 Federal financial participation at the applicable matching rate for computerized support enforcement systems.

Federal financial participation at the applicable matching rate is available only in computerized support enforcement systems expenditures for:
(a) The operation of a system that meets the requirements specified in § 307.10, or § 307.11 if the conditions for APD approval in §§ 307.5 and 307.15 are met; or
(b) Systems approved in accordance with Part 95, Subpart F of this title. This may include expenditures for a system which were disallowed by the Office because the system failed to comply substantially with an APD approved under § 307.15.

[50 FR 19658, May 9, 1985; 57 FR 47005, Oct. 14, 1992; 63 FR 44817, Aug. 21, 1998]

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Current through March 25, 2003; 68 FR 14521

§ 307.40 Suspension of approval of advance planning documents for computerized support enforcement systems.

(a) Suspension of approval. The Office will suspend approval of the APD for a computerized support enforcement system approved and developed under 307.10, or § 307.11 as of the date that the system ceases to comply substantially with the criteria, requirements, and other provisions in the APD, including conditions in § 307.15(b) and the requirements in 307.10, or § 307.11 of this part covered under a waiver granted in accordance with § 307.5. Federal funding will be disallowed as described in § 307.30(d) and § 307.31(d).
(2) The Office will immediately notify the State in writing of the decision to suspend approval of the APD. The notice will give the reasons for and effective date of the suspension and specify the actions required for the State to receive Federal funding in the future for its systems activities.
(b) Duration of suspension. The suspension of approval of an APD under paragraph (a) shall remain in effect until the

Office determines that actions required for Federal funding in the future, as specified in the notice of suspension, have been taken and the Office so notifies the State.

[57 FR 47005, Oct. 14, 1992; 63 FR 44405, Aug. 19, 1998; 63 FR 44817, Aug. 21, 1998]